

**ANTENNA GROUND LEASE
BETWEEN THE CITY OF CUPERTINO AND
T-MOBILE WEST TOWER LLC**

Site Name: SF551 Hwy 85 4TH
Business Unit #: 827779

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ANTENNA GROUND LEASE

This Lease ("Lease") is made and entered into as of _____, 20__, by and between the City of Cupertino, California, ("City" or "Lessor") and T-Mobile West Tower LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact ("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 liability company organized under the laws of the State of Delaware.
- C. Lessee requests the use 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 and consistent with the requirements of Chapter 19.136 of the Cupertino Municipal Code regulating wireless communications facilities.

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 10555 Mary Avenue, Cupertino CA, APN# 326-06-052, commonly known as Cupertino Service Center ("City Property"). Lessee shall lease sixty-four (64) 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 operate existing equipment in an area no more than sixty-four (64) square feet ("Equipment"), underground cable and conduit and an existing monopole tower ("Improvements"). The Improvements are more particularly shown on the approved plans, which were submitted to and approved by the City for the initial construction of the facilities. A copy of the plans is attached and incorporated by this reference as **Exhibit "C"**. It is understood and agreed that the final plan for the Improvements are the plans approved by the City through its site development and use permit process(es). Any substantial modifications and/or additions to the existing equipment may require further site development and use permits from the City, as applicable pursuant to the Cupertino Municipal Code. The plans for substantial modifications and/or additions must comply with all applicable review and approval processes pursuant to the Cupertino Municipal Code. City reserves the right to require that substantial modifications (excluding substantially similar or like-Site Name: SF551 Hwy 85 4TH

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for-like modifications and excluding any minor modification which would not require an amendment to the site development or building permits) not be visually intrusive under the circumstances as determined by City, having the least adverse visual effect on the environment and its character, on existing vegetation, and on the community in the area of the Improvements.

ARTICLE 2

Term

2.1 Term. The term of this Lease shall be for a period of approximately fifteen years commencing on the Commencement Date and terminating on the fifteenth anniversary of the Commencement Date, unless earlier terminated ("Term").

2.2 Commencement Date. The Commencement Date of this Lease shall be the date this Lease is approved by the City Council, after final approval of any Use Permit if required.

ARTICLE 3

Rental

3.1 Base Rent. 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 Dollars Six Hundred Dollars (\$3,600.00) ("Base Rent"). If the Commencement Date is not the first day of the month of the Term, thereafter the Base Rent shall be due on the first day of each calendar month of the Term. The first month's rent shall be prorated as necessary. Rent shall be provided to: City Manager, City of Cupertino, 10300 Torre Avenue, Cupertino, CA 95014-3202

3.2 Annual Increase. During the Term of this Lease, including the Renewal Term, the Base Rent shall be increased annually by 5%, beginning on January 1, 2019, and effective each January 1 throughout the Term and any Renewal Term. The sum shall be adjusted annually resulting in a compound rate of increase. For example, the Base Rent for December 1, 2018 would be Three Thousand Six Hundred Dollars (\$3600.00) per month and the rate on January 1, 2019 would be Three Thousand Seven Hundred Eighty Dollars (\$3,780.00).

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 the Lease ("Transactional Costs"), not to exceed \$20,000. City shall furnish Lessee with an invoice reflecting the Transactional Costs due along with documentation reasonably evidencing the Transactional Costs, and Lessee shall make full payment to City of these costs within thirty (30) days from the date 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. 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, upon the earlier of: (a) sixty (60) days after execution of this Lease by the City; or (b) issuance of a certificate of occupancy, to pay to City the sum of two thousand five hundred dollars (\$2,500.00). 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.

3.6 Rent Increase for Additions and Modifications. In the event of any additions, changes or modifications of or to Lessee's equipment that increase the size of the footprint of the Premises, City shall have the right to increase the Rent by an amount equal to the then-current per square foot rental rate charged by City to Lessee times the square footage of the ground space area in excess of the original footprint of the Premises leased by City to Lessee hereunder.

ARTICLE 4 Use

4.1 Permitted Uses. Lessee shall use the Premises for purposes related to the wireless communication facility only. Lessee shall use the Premises for installation, operation, maintenance and use of a wireless communication facility, consisting of the equipment, improvements and facilities and the utilities, cables and wires reasonably needed to support the operation of a wireless communication facility. The installation of the Improvements shall be subject to the reviews, approvals set forth in Section 4.3. Lessee shall be solely responsible for all costs associated with the construction, installation, maintenance and use of the Improvements.

4.2 Access.

4.2.1. Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (hereinafter singularly and collectively referred to as "Tests") to determine the suitability of the Premises for additions to Lessee's Facilities (as defined herein) and for the purpose of preparing for the construction of additions to Lessee's Facilities. During any Tests or pre-construction work, Lessee will have insurance as set forth in Exhibit E. Lessee will notify City of any proposed Tests or pre-construction work and will coordinate the scheduling of same with City.

4.2.2. Lessee has the right to construct, maintain and operate on the Premises wireless communication facilities, including but not limited to, radio frequency transmitting and receiving equipment, batteries, utility lines including fiber optic facilities, transmission lines, radio frequency transmitting and receiving antennas and supporting structures and improvements (hereinafter referred to as "Facilities"). All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in good workmanlike manner. The Title to Lessee's Facilities and any equipment

placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease.

4.2.3. At no charge to Lessee, City shall provide access to the Premises to Lessee, Lessee's employees, agents, contractors and subcontractors five (5) days a week during working hours and on other days and times by special arrangement with City. Notwithstanding the foregoing, in the event of an emergency, Lessee shall have access to the Premises at all hours, seven (7) days a week. Twenty-four hour emergency access is available through County Communications. City represents and warrants that it has full rights of ingress and egress from Premises, and hereby grants such rights to Lessee to the extent required to construct, maintain, install and operate Lessee's Facilities on the Premises. Lessee's exercise of such rights shall not cause undue inconvenience to City, nor shall it compromise the security of City's adjoining Site.

4.2.4. Lessee acknowledges that other lessees and licensees also have rights to access the City Property, 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.

4.2.5. City shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow access. City shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Lessee or Lessee's agents or assigns. If Lessee or Lessee's agents or assigns cause any such damage, Lessee shall promptly repair same.

4.2.6. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power and fiber optic conduits and facilities). Subject to City's approval of the location, such approval not to be unreasonably withheld, conditioned or delayed, Lessee shall have the right to place utilities on (or to bring utilities across) City's property in order to service the Premises and Lessee's Facilities, subject to applicable permit review and approval. No easement or interest in City property is implied with the granting of permits for utility connections across City property.

4.2.7. Lessee shall fully and promptly pay for all utilities furnished to Premises for the use, operation and maintenance of Lessee's Facilities.

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 to be done anything which unreasonably disturbs the users of the City Property or the occupants of neighboring property. 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. No materials or articles of any nature shall be stored 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 and any other governmental agencies having jurisdiction. Lessee shall maintain permits, licenses and

approvals in force through the Term of this Lease, including the Renewal Term. If requested by Lessee, City, in its proprietary capacity as the owner of the City Property, will reasonably cooperate in executing, at Lessee's sole cost and expense, all documents required by any governmental authority in connection with Lessee's development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals reasonably necessary to utilize the Premises for the uses permitted by this Lease. The revocation or expiration of any permit, license or approval shall be a breach of this Lease. Should Lessee wish to change the Improvements (excluding any substantially similar or like-for-like modifications and excluding any minor modification which would not require an amendment to the site development permit or a building permit), it shall not do so without the prior approval of City, such approval not to be unreasonably withheld, conditioned or delayed, and amendment of this lease and without obtaining all required permits, licenses and approvals from the City and any other governmental agencies with jurisdiction. 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 when such approval is required, 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 or other regulatory agencies in connection with Lessee's use of the Premises prior to the Lease commencement or at any time during the term of the Lease.

4.5 COMPLIANCE WITH LAWS

4.5.1 General Laws. Lessee shall comply with all laws and regulations applicable to this Lease. Lessee will promptly notify City of changes in the law or other conditions that may affect the Project or Lessee's ability to perform. Lessee is responsible for verifying the employment status of employees performing the Work, as required by the Immigration Reform and Control Act.

4.5.2 Discrimination Laws. Lessee shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS) or any other protected classification. Lessee shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777 and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Lessee understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Lessee or Lessee's employees or sub-Lessees will not be tolerated.

4.5.3 Conflicts of Interest. Lessee, its employees, subcontractors, servants and agents, may not have, maintain or acquire a conflict of interest in relation to this Agreement in violation of law, including Government Code section 1090 and Government Code section 81000 and their accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Lease Agreement, as that term is defined by state law, or in violation of a City ordinance or policy while serving as a City Representative or for one year thereafter. Lessee, its employees, subcontractors, servants and agents warrant they are not employees of City or have any relationship with City officials, officers or employees that creates a conflict of interest. Lessee may be required to file a conflict of interest form if it makes certain governmental decisions or serves in a staff

capacity, as defined in section 18700 of the California Code of Regulations. Lessee agrees to abide by City rules governing gifts to public officials and employees.

4.5.4 Remedies. Any violation of Section 4.5 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating the Lease Agreement. City reserves all rights and remedies under the law and this Lease, including seeking indemnification.

4.6 Condition, Use of Premises. 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.

4.7 Hazardous Materials.

4.7.1 Hazardous Materials on Premises. Lessee shall not introduce any Hazardous Materials (as defined below) to the Premises or the City Property excluding any Hazardous Materials which are components of commercially available products 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.

4.7.2. 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 under any of the following statutes or regulations and any and all of those substances included 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.

4.7.3 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold City 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), arising from, or caused or resulting, either prior to or 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 or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability, except to the extent arising from City's negligence or willful misconduct. 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, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

4.7.4 City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, and with seven days' notice to Lessee, City shall have the right to enter upon the Premises, upon prior notice to Lessee, in order to conduct tests of water and soil 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 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, except to the extent arising from City's negligence or willful misconduct. 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.

4.7.5 Survival. This entire Section 4.6 of this Lease shall survive termination of the Lease, as to any activities during the term of this Lease.

4.7.6 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 anticipated 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; (iv) Lessee fails to provide the electromagnetic testing results required pursuant to Section 4.7.9 within the time provided; (v) tests of Lessee's facilities on two or more occasions show electromagnetic emissions in excess of FCC maximum Permissible Exposure limits.

4.7.7 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 negatively impact any other existing facility or antenna. Modifications to Lessee's equipment shall not cause interference with other facilities existing at the time of modification. In the event that Lessee's equipment does impact 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 property, to ensure that Lessee's equipment does not interfere with the frequency utilized by existing utilities.

4.7.8 Co-location. Lessee acknowledges that City shall be entitled to lease for the provision of municipal services, or require Lessee to lease with other telecommunications carriers, additional positions on Lessee's pole or antenna (as applicable). Lessee shall negotiate in good faith for the shared use of the Site by additional service providers, and shall:

- (a) Respond within 60 days to a request for information from a potential shared-use Applicant;
- (b) Negotiate in good faith concerning future requests for shared use of the Site by other Telecommunications providers;
- (c) Allow shared use of the Site if another wireless service provider agrees in writing to pay reasonable charges.
- (d) Understand that failure to abide by the conditions outlined above shall constitute a material default or breach of this Lease by Lessee.

Lessee shall review such request and determine the following without limitation (1) whether the proposed Other User's installation interferes or conflicts with Lessee's or other user's use of the antenna structure or the Premises; (2) whether the antenna structure can withstand the structural load of the Other User's proposed equipment; or (3) if the Other user's proposed equipment jeopardizes Lessee's permit 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 User's 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 cause the addition of new facilities in the future, Lessee will not electronically or physically interfere with such new facilities. Lessee shall reasonably cooperate with current and future users. City will not grant a lease to any party for use of the Site, if the new use would interfere with Lessee’s operation of the Cell Site, and any future lease of the Site which permits installation of communication equipment shall be conditioned upon not interfering with Lessee’s operation of the Cell Site.

4.7.9 Electromagnetic Emissions. Lessee’s operations on the Premises shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. Lessee shall conduct all necessary tests after its Improvements are constructed on the Premises to ensure that its facilities are in compliance with those laws and regulations. The tests shall be conducted by a licensed professional engineer expert in the field of radio frequency emissions, and the results shall be provided to the City within ten (10) days. To ensure that the site is operating within FCC maximum Permissible Exposure limits, Lessee shall cause tests to be conducted every two years by a licensed professional engineer expert in the field of radio frequency emissions, to ensure continued compliance with all applicable federal laws and regulations regarding electromagnetic emissions, and shall provide the results to the City within ten (10) days. In the event it is found that Lessee’s operation of the site results in violation of federal laws and regulations regarding electromagnetic emissions, City in its discretion can require Lessee to submit to more frequent testing, and can pursue any other remedy now or hereafter available to City under the terms of this Lease, federal, state, or local law, or judicial decisions.

ARTICLE 5

Construction, 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. On the last day of the term, or upon any option term, Lessee shall surrender the Premises to City in the same condition as when received, reasonable wear and tear excepted, clean and free of debris. 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 excepted. At City’s election, certain Improvements required to be removed pursuant to this Section may be left in place for City’s use if the Public Works Director determines in writing that such Improvements are of value to the City, or that removal of such improvements may cause damage to adjacent underground facilities.

5.3 City’s Rights. If Lessee is in default, subject to the applicable cure periods, City may enter upon the Premises, (except in the case of an emergency, in which case no notice shall be required), to put City’s facilities in good order, condition and repair, provided, however, in the case of a non- emergency, City shall notify Lessee of City’s intention to enter upon the Premises to put City’s facilities in good order, condition and repair, ten (10) days prior to performing any work.

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 at any time during the term of this Lease to install and maintain a security system, or upgrade the existing security system, Lessee agrees to bear the sole cost of any such security system, device, operation or plan and the installation, implementation and maintenance thereof. Lessee shall obtain City's prior approval before installing or implementing any security system, device, operation or plan, such approval not to be unreasonably withheld, conditioned or delayed.

5.6 Improvements.

5.6.1 Payment for Labor or Materials. To the extent applicable to the Improvements authorized pursuant to the herein Lease, 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. Except in the event of an emergency where advance notice cannot reasonably be given, 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 City Property. 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 Before construction of any 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, to the extent said provisions apply to the herein Lease:

5.6.3 Compliance with Applicable codes. All work at Premises shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

5.6.4 Certification. Where a certification is called for on a technological matter or issue, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California. All other certifications shall be made by an individual authorized to make commitments for or on behalf of the Lessee.

5.6.5 Permits and Licenses. A holder of a Special Use Permit or Administrative Special Use Permit granted under this Lease shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the Lessee.

5.6.6 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"**.

5.6.7 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 the 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.

5.6.8 Line Location Requests. Lessee is responsible for promptly responding to line location requests. For underground service alerts for street lighting and traffic signal conduits, City's Service Center must be called at (408) 777-3269. Government Code Section 4215 requires Lessee to notify City and Utility in writing if it discovers utilities or utility facilities not identified in the Agreement.

5.6.9 Pursuant to Government Code Section 7104, Lessee must stop work, notify City in writing, and wait for instructions if one of the conditions below is found at the worksite.

- (a) Material believed to be hazardous waste under Health and Safety Code Section 25117, and which requires removal to a Class I, Class II, or Class III disposal site pursuant to law;
- (b) Subsurface or latent physical conditions at the Project worksite differing from those indicated by information about the worksite made available to Lessee;
- (c) Unknown physical conditions at the Project worksite of any unusual nature, materially different from those ordinarily encountered and from those generally recognized as inherent in the character of the Work.

5.6.10 For contracts \$25,000 or higher that require excavation or involve trenches five feet or more in depth, Lessee must submit a detailed plan for City approval, per Labor Code Section 6705 prior to commencing work. The plan must show the design of shoring, bracing, sloping and other provisions for worker protection from caving ground and other hazards. The protective system must comply with all Construction Safety Orders. If the plan varies from shoring system standards, it must be prepared by a registered civil or structural engineer.

5.7 Urban Runoff Management.

5.7.1 All Work must fully comply with federal, state and local laws and regulations concerning storm water management. Lessee must avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, Lessee will use only the amount of water necessary to dampen the dust. Lessee will take all steps necessary to keep wash water out of the streets,

gutters and storm drains. Prior to the start of the Work, Lessee will implement erosion and sediment controls to prevent pollution of storm drains, and must upgrade and maintain these controls based on weather conditions or as otherwise required by City. These controls must be in place during the entire Lease time and must be removed at the end of construction and completion of the Work. Such controls must include, but will not be limited to, the following requirements:

- (a) Install storm drain inlet protection devices such as sand bag barriers, filter fabric fences, and block and gravel filters at all drain inlets impacted by construction. During the annual rainy season, October 15 through June 15, storm drain inlets impacted by construction work must be filter-protected from onsite de-watering activities and saw-cutting activities. Shovel or vacuum saw-cut slurry and remove from the Work site;
- (b) Cover exposed piles of soil or construction material with plastic sheeting. Store all construction materials in containers;
- (c) Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain and at the end of each work day. When the Work is completed, wash the streets, collect and dispose of the wash water offsite in lawful manner;
- (d) After breaking old pavement, remove debris to avoid contact with rainfall/runoff;
- (e) Maintain a clean work area by removing trash, litter, and debris at the end of each work day and when Work is completed. Clean up any leaks, drips, and other spills as they occur.

5.7.2 These requirements must be used in conjunction with the California Stormwater Quality Association and California Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, and any other applicable documents on stormwater quality controls for construction. Lessee's failure to comply with this Section will result in the issuance of noncompliance notices, citations, Work stop orders and regulatory fines.

5.8 Project Coordination City Project Manager. City assigns as the City representative for all purposes under this Agreement, with authority to require compliance with the Scope of Work. City may substitute Project Managers at any time and without prior notice to Lessee. Lessee Project Manager. Subject to City approval, Lessee assigns as its single representative for all purposes under this Agreement, with the responsibility to ensure progress with the Work. Lessee's Project Manager is responsible for coordinating and scheduling the Work and must regularly update the City Project Manager about the status and any delays with the Work, consistent with the Scope of Work. Any substitutions must be approved in writing by City.

5.9 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.

5.10 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.

5.11 City Access. The City or its agents, may enter into the Premises at all reasonable times during the term of this Lease upon seven days prior notice to Lessee 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.

5.12 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 Premises, such consent not to be unreasonably withheld, conditioned or delayed.

5.13 Bond Requirement. Licensee shall provide a bond to Licensor in the amount of fifty thousand dollars (\$50,000.00), to protect Licensor in that event that Licensee fails to remove its Antennas upon termination of this License. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. Subsequent increases in the number of installed antennas shall require a proportionate increase in bond amounts. The bond forms shall be in a form approved by the City Attorney.

ARTICLE 6 Indemnity and Insurance

6.1 Indemnification. To the fullest extent permitted by law, Lessee must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers and consultants (individually, an "Indemnitee," and collectively the "Indemnites"), through legal counsel reasonably acceptable to City, from and against any and all liability, loss, damage, claims, causes of action, demands, charges, costs and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Lessee, its employees, subcontractors, representatives, or agents, in bidding or performing the work or in failing to comply with any obligation of Lessee under the Lease, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Lessee's failure or refusal to timely accept a tender of defense pursuant to this Lease will be deemed a material breach of the Lease. City will timely notify Lessee upon receipt of any third-party claim relating to the Lease. Lessee's indemnity obligations under this Lease will survive the expiration or any early termination of the Lease.

6.2 Insurance. Licensee shall comply with the Insurance Requirements, attached and incorporated here as Exhibit E, and must maintain the insurance for the duration of the Lease, or longer as required by City. City will not execute the Lease until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City purchasing insurance for Licensee and adding the costs to Licensee's compensation to City, or terminating the Lease.

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

Site Name: SF551 Hwy 85 4TH
Business Unit #: 827779

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 of Statutory Termination. City and Lessee waive the provisions of any statutes that 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 reimburse City for any documented increase in real estate or personal property taxes levied against the City's Property that are directly attributable to the Improvements constructed by Lessee which become due and payable to City 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 determination hereunder. 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 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 Premises and/or 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 Premises, Improvements public utilities or energy within the Premises;

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

8.3.3 New excise, transaction, sales, privilege or other taxes now or hereafter imposed upon City as a result of this Lease; and,

8.3.4 All costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If at

any time during the Term, the taxation or assessment of the Premises and/or 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 property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or 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

9. 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/Advertisement

10. No signs may be displayed on or about City's property, except signage which is required by law or by the Agreement, without City's prior written approval as to size, design and location.

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 as a going concern, or to any entity which obtains a security interest in a substantial portion of Lessee's assets. Any entity listed in this paragraph shall have a net worth of not less than ten million dollars (\$10,000,000.00).

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.

ARTICLE 12
Defaults; Remedies

12.1 Default by Lessee. 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 for non-payment of Rent as defined by Civil Code §1951.3, or the abandonment of Premises by Lessee for non-use for the period of time specified in the Cupertino Municipal Code, Section 19.136.080, which shall require removal of Lessee's facilities with Lessee to bear the entire cost of demolition and land restoration. The Premises will not be considered abandoned as long as Lessee is continuing to pay the rent amount required by this Lease.

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 written notice from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

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 12.1.2 above, where the failure shall continue for a period of thirty (30) days after 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 City's Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required, 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 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 Default by City. The occurrence of the following shall constitute a material default or breach of this Lease by City:

12.3.1 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 sixty (60) days after written notice from Lessee to City; provided, however, that if the nature of the City's default is such that more than sixty (60) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a sixty (60) day period and thereafter diligently prosecutes such cure to completion.

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

12.4.1 Terminate the Lease in a manner consistent with Article 13 of this Lease.

12.4.2 Take any actions that are consistent with Lessee's rights.

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 sixty (60) 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 sixty (60) days after written notice from Lessee to City; provided, however, that if the nature of the City's default is such that more than sixty (60) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a sixty (60) 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; or

13.14 Condemnation of any part of the parcel of land upon which the Premises is situated, pursuant to subsection 13.3.

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 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; 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. If City receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, City will notify Lessee of the proposed taking within ten (10) days of receiving said notice and Lessee will have the option to: (i) terminate the lease in accordance with this Article; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment in Base Rent on account of the portion of the Premises so taken.

ARTICLE 14 City's Liability

14. 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

15. 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

16. 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 one hundred fifty percent (150%) of the Base Rent in effect at the time of expiration.

ARTICLE 17
City's Access

17. Upon seven days prior notice to Lessee, City's right to enter the Premises for the purpose of showing to prospective purchasers, lenders or lessees, and making alterations, repairs, improvements or additions to City facilities within the Premises, shall not be unreasonably withheld by Lessee.

ARTICLE 18
Quiet Possession

18. 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

19. City reserves to itself, the right, from time to time, to grant such easements, rights and dedications 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/Partial Invalidity. If a court finds any term or provision of this Agreement to be illegal, invalid or unenforceable, the legal portion of said provision and all other Agreement provisions will remain in full force and effect.

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 Agreement and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete Agreement between City and Lessee with respect to the Work and the Project. No oral Agreement or implied covenant will be enforceable against City. If any attachment or incorporated provisions conflict or are inconsistent with the terms of this Lease Agreement,

the Lease Agreement terms will control. This Lease may be modified in writing only. A major modification of the terms of this Lease shall require the approval of the City Council.

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 Survival. The Lease provisions which by their nature should survive the Lease, including without limitation all warranties, indemnities, payment obligations, insurance and bonds, shall remain in full force and effect after the Lease ends.

20.7 Inserted Provisions. Each provision and clause required by law to be inserted in this Agreement will be deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions.

20.8 Captions. The captions, titles, and headings in this Agreement are for convenience only and may not be used in the construction or interpretation of the Agreement or for any other purpose.

20.9 Counterparts. This Agreement may be executed in counterparts, each of which is an original and all of which taken together shall form one single document.

20.10 Notices. All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery, the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

Lessee:

T-Mobile West Tower LLC
12920 S.E. 38th Street
Bellevue, Washington 98006
Attention: Leasing Administration

With a copy to:

T-Mobile West Tower LLC
c/o CCTMO LLC
Attn: Legal – Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

City:

City Manager, City of Cupertino

Site Name: SF551 Hwy 85 4TH
Business Unit #: 827779

10300 Torre Avenue
Cupertino, CA 95014-3202

With Copy to:
City Attorney, City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

Each notice shall specify the provision pursuant to which it is given. Either party may specify a different address or contact person. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162.

20.11 Waivers. Neither acceptance of the Work nor payment thereof shall constitute a waiver of any Lease provision. City waiver of any breach shall not constitute waiver of another provision or breach.

20.12 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.

20.13 Governing Law, Venue, and Dispute Resolution. This Lease is governed by the laws of State of California. Venue for any legal action shall be the Superior Court of the County of Santa Clara, California.

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

20.15 Attorneys' Fees. If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Lease, the prevailing party will be entitled to reasonable attorney fees and costs.

20.16 Brokers. Each party represents that it is 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.

20.17 Authority to Execute. The persons signing below warrant they have the authority to enter into this Lease Agreement and to legally bind their respective Parties. If Lessee is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313.

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

20.19 Independent Contractor.

20.19.1 Status. Lessee is an independent Contractor and not an employee of City. Lessee is solely responsible for the means and methods of performing the Work and for the persons under this employment. Lessee is not entitled to worker's compensation or any other City benefits.

20.19.2 Lessee's Qualifications. Lessee warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Work in a competent and professional manner and according to the highest standards and best practices in the industry.

20.19.3 Permits And Licenses. Lessee warrants that all work performed on the facilities shall be performed by professionals properly licensed, registered, and/or certified to perform the Work as required by law, and have procured a City Business License.

20.19.4 Tools, Materials And Equipment. Lessee will supply all tools, materials and equipment required to perform the Work under this Lease.

20.19.5 Payment of Taxes. Lessee must pay income taxes on the money earned under this Lease. Upon City's request, Lessee will provide proof of payment and will indemnify City for violations pursuant to the indemnification provision of this Lease.

20.20 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.

20.21 Estoppel Certificate. Lessee shall, from time to time, upon at least thirty (30) days 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.

20.22 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.

20.23 IRS Form W-9. City agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Lease and at such other times as may be reasonably requested by Lessee. In the event the City Property is transferred, the succeeding lessor shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paperwork to effect a transfer in the Rent to the new lessor. City's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default and Lessee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from Rent payments.

20.24 Deletion of Prior Lease. City and Lessee are parties to that certain Antenna Site Lease Agreement that commenced December 23, 1996, by and between City and Lessee's predecessor in interest, Pacific Bell Mobile Services, a California corporation (the "Original Lease"). The Original Lease is hereby amended by deleting it in its entirety and restating the Original Lease as provided for in this Lease.

20.25 Validity Of Agreement. This Agreement is valid and enforceable only if it is signed by the City Manager or an authorized designee, and is approved for form by the City Attorney's Office.

CITY OF CUPERTINO, CALIFORNIA

APPROVED AS TO FORM:

By: _____

By: _____

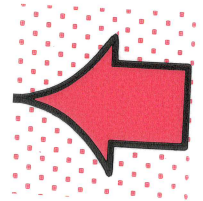
Name: _____
City Attorney

Name: _____
City Manager

ATTEST:
10300 Torre Avenue
Cupertino, CA 95014-3202

By: _____
City Clerk

“City”



**SIGN
HERE**

T-MOBILE WEST TOWER LLC

T-Mobile West Tower LLC,
a Delaware limited liability company

By: CCTMO LLC,
a Delaware limited liability company
Its: Attorney in Fact

By: Melanie Webb

Title: Melanie Webb
Senior Transaction Manager
2000 Corporate Drive
Canonsburg, PA 15317

Telephone: () - _____
Facsimile: () - _____

“Lessee”

EXHIBIT "A"

Legal Description of City Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, CITY OF CUPERTINO, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE 1:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THAT CERTAIN 40 ACRE TRACT OF LANDS DESCRIBED IN THE DEED FROM LLOYD L. EDWARDS, ET UX, TO JOE A. SORCI, ET UX., DATED FEBRUARY 8, 1945, RECORDED IN FEBRUARY 10, 1945 IN BOOK 1243 O.R., PAGE 265, SANTA CLARA COUNTY RECORDS, DISTANT THEREON SOUTH 0 ° 08' EAST 2520.46 FEET FROM AN IRON PIPE IN THE CENTERLINE OF HOMESTEAD ROAD;

RUNNING THENCE SOUTH 0 ° 08' EAST ALONG THE EASTERLY LINE OF SAID 40 ACRE TRACT, 132.09 FEET TO AN IRON PIPE AT THE SOUTHEASTERLY CORNER THEREOF;

RUNNING THENCE SOUTH 89 ° 44' WEST ALONG THE SOUTHERLY LINE OF SAID 40 ACRE TRACT, 659.52 FEET TO AN IRON PIPE AT THE SOUTHWESTERLY CORNER THEREOF;

RUNNING THENCE NORTH 0° 08' 30" WEST ALONG THE WESTERLY LINE OF SAID 40 ACRE TRACT, 132.09 FEET;

RUNNING NORTH 89° 44' EAST 659.54 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 2.00 ACRES AND BEING A PORTION OF THE SOUTHWESTERN 1/4 OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 2 WEST, M.D.B. & M.

PARCEL TWO 2:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THAT CERTAIN 40 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM LLOYD L. EDWARDS, ET UX., TO JOE A. SORCI, ET UX., DATED FEBRUARY 8, 1945, RECORDED FEBRUARY 10, 1945 IN BOOK 1243 O.R., PAGE 265, SANTA CLARA COUNTY RECORDS, DISTANT THEREON SOUTH 0° 08' EAST, 2464.46 FEET FROM AN IRON PIPE IN THE CENTERLINE OF HOMESTEAD ROAD;

RUNNING THENCE SOUTH 0 ° 08' EAST ALONG THE EASTERLY LINE OF SAID 40 ACRE TRACT, 56.00 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 2 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM JOE A. SORCI, ET UX, TO M. JAKOVICH, ET UX., DATED FEBRUARY 18, 1948, RECORDED FEBRUARY 18, 1948 IN BOOK 1569 O.R., PAGE 37, SANTA CLARA COUNTY RECORDS; RUNNING THENCE SOUTH 89 ° 44' WEST ALONG THE NORTHERLY LINE OF SAID 2 ACRE TRACT, 659.54 FEET TO THE NORTHWESTERLY CORNER THEREOF ON THE WESTERLY LINE OF SAID 40 ACRE TRACT;

RUNNING THENCE NORTH 89 ° 44' WEST ALONG SAID LAST NAMED LINE 56 FEET;

RUNNING THENCE NORTH 89 ° 44' EAST AND PARALLEL WITH THE NORTHERLY LINE OF SAID 2 ACRE TRACT, 659.55 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 0.85 ACRES AND BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 2 WEST, M.D.B. & M.

EXCEPTING FROM PARCELS ONE AND TWO ALL THAT PORTION THEREOF DESCRIBED AS PARCELS 1 AND 2 IN THE DEED FROM M. JAKOVICH, ET UX., TO THE STATE OF CALIFORNIA, RECORDED AUGUST 12, 1964 IN BOOK 6619, O.R., PAGE 556, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

EXCEPTION 1:

COMMENCING AT THE SOUTHWESTERLY CORNER OF THE 2.00 ACRE PARCEL OF LAND CONVEYED TO M. JAKOVICH, ET UX., BY DEED RECORDED FEBRUARY 18, 1949 IN BOOK 1569 IN OFFICIAL RECORDS, PAGE 37;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, SOUTH 89° 15' 33" EAST 133.92 FEET; THENCE FROM A TANGENT THAT BEARS NORTH 16 ° 12' 43" WEST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1447.00 FEET, THROUGH AN ANGLE OF 4° 35' 21", AN ARC LENGTH OF 115.90 FEET;

THENCE FROM A TANGENT THAT BEARS NORTH 12 ° 16' 35" WEST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 600.00 FEET THROUGH AN ANGLE OF 7 ° 21' 34", AN ARC LENGTH OF 77.07 FEET TO THE SOUTHERLY LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED OCTOBER 2:, 1959 IN BOOK 4582 OF OFFICIAL RECORDS, PAGE 479;

THENCE ALONG LAST SAID LINE, NORTH 89° 15' 33" WEST 91.69 FEET TO THE EASTERLY LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED DECEMBER 1, 1960 IN BOOK 4998 OF OFFICIAL RECORDS, PAGE 436;

THENCE ALONG LAST SAID LINE, SOUTH 0° 52' 03" WEST 188.09 FEET TO THE POINT OF COMMENCEMENT.

CONTAINING 0.474 OF AN ACRE, MORE OR LESS.

AS TO PARCEL 1 ABOVE, THIS CONVEYANCE IS MADE FOR THE PURPOSES OF A FREEWAY AND THE GRANTOR HEREBY RELEASES AND RELINQUISHES TO THE GRANTEE ANY AND ALL ABUTTER'S RIGHTS OF ACCESS, APPURTENANT TO GRANTOR'S REMAINING PROPERTY, IN AND TO SAID FREEWAY,

EXCEPTION 2:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THE 2.00 ACRE PARCEL OF LAND CONVEYED TO M. JAKOVICH, ET UX., BY DEED RECORDED FEBRUARY 18, 1948 IN BOOK

1569 OF OFFICIAL RECORDS, PAGE 37;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, NORTH 89° 15' 33" WEST 30.00 FEET;

THENCE NORTH 0 ° 52' 31" EAST 188.09 FEET TO THE LINE COMMON TO THE LANDS NOW OR FORMERLY OF SAID M. JAKOVICH, ET UX, AND OF JOE SORCI, ET UX.;

THENCE ALONG LAST SAID LINE, SOUTH 89° 15' 33" EAST, 30.00 FEET TO THE LINE COMMON TO THE LANDS NOW OR FORMERLY OF SAID M. JAKOVICH, ET UX., AND OF NORMAN J. NATHANSON, ET AL;

THENCE ALONG LAST SAID LINE, SOUTH 0° 52' 31" WEST 188.09 FEET TO THE POINT OF COMMENCEMENT.

CONTAINING 0.130 OF AN ACRE, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3. MULTIPLY THE ABOVE DISTANCES BY 1.0000495 TO OBTAIN GROUND LEVEL DISTANCES.

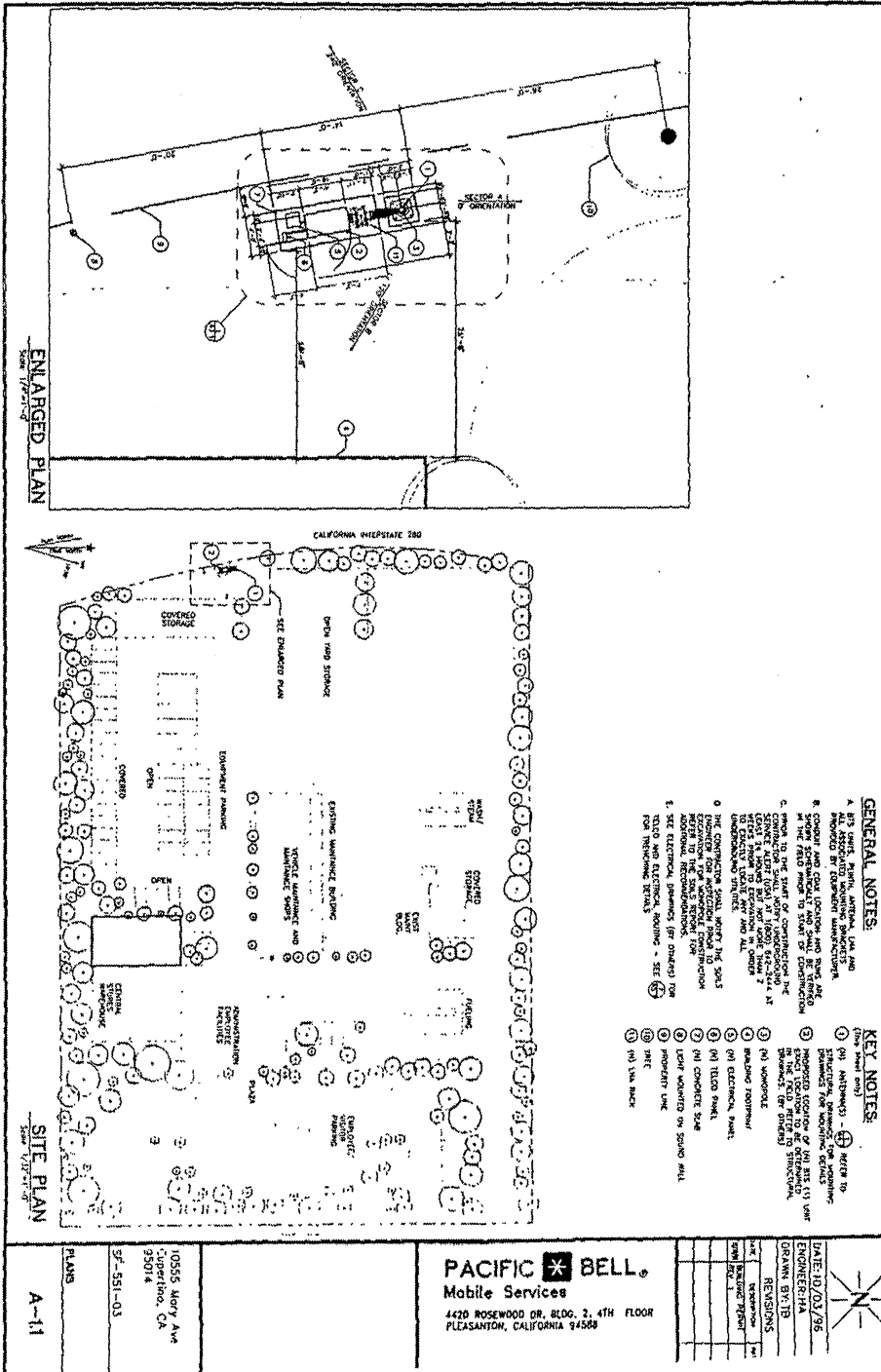
THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTIONS ARE ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3. MULTIPLY THE ABOVE DISTANCES BY 1.0000495 TO OBTAIN GROUND LEVEL DISTANCES.

TAX ID NO: 326-06-052

ADDRESS: 10555 MARY AVE., Cupertino, CA 95014

EXHIBIT "C"

Improvements



- GENERAL NOTES:**
1. ALL EXISTING UTILITIES, STRUCTURES, AND LANDSCAPE SHALL BE PRESERVED UNLESS OTHERWISE INDICATED BY EXISTENCE MARKINGS.
 2. CONDUCT AND CHECK LOCATIONS AND DEPTHS OF ALL UTILITIES IN THE FIELD PRIOR TO START OF CONSTRUCTION.
 3. PRIOR TO THE START OF CONSTRUCTION, THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES AND AGENCIES OF THE STATE OF CALIFORNIA.
 4. THE CONTRACTOR SHALL NOTIFY THE STATE DEPARTMENT OF INDUSTRIAL RELATIONS AND THE STATE DEPARTMENT OF INDUSTRIAL ACCIDENT PREVENTION AND SAFETY INVESTIGATION OF ALL ACCIDENTS AND INJURIES.
 5. SET ELECTRICAL, PLUMBING, (IF APPLICABLE) GAS, AND MECHANICAL DETAILS - SEE SPECIFICATIONS.
- KEY NOTES:**
1. (1) AIRWAY - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 2. (2) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 3. (3) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 4. (4) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 5. (5) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 6. (6) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 7. (7) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 8. (8) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 9. (9) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 10. (10) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 11. (11) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 12. (12) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 13. (13) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 14. (14) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 15. (15) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 16. (16) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 17. (17) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 18. (18) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 19. (19) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.
 20. (20) CONDUIT - REFER TO SPECIFICATIONS FOR WORKING DETAILS.

PACIFIC BELL
Mobile Services
 4420 ROSEWOOD DR., BLDG. 2, 4TH FLOOR
 PLEASANTON, CALIFORNIA 94588

10555 AHOY AVE
 SUPERIOR, CA
 95074
 SF-551-03
 PLANS
 A-11

Site Name: SF551 Hwy 85 4TH
 Business Unit #: 827779

EXHIBIT "D"
Construction Schedule

N/A

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 do not limit Lessee's indemnification. The policies shall be endorsed to provide thirty (30) days' advance written notice of cancellation when the insurer cancels for any reason other than non-payment of premium to the City of Cupertino by mail, "Attention: City Manager." Endorsements naming the City as additional insured as applicable 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 reasonably 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:

\$2,000,000 each occurrence

\$4,000,000 aggregate

Property Damage:

\$1,000,000 each occurrence

\$4,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. The required limits may be met by a combination of primary and excess or umbrella insurance.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence

Property Damage: \$1,000,000 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 commercial 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 commercial general and automotive liability insurance to City with respect to the services herein, a waiver of any right to subrogation which any insurer of the 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, 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 Lease upon renewal of the insurance coverages. 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

WHEN RECORDED RETURN TO:

Prepared by:
Parker Legal Group, PC
600 West Broadway, Suite 700
San Diego, California 92101

Space above this line for Recorder's Use

**A.P.N. 326-06-052
California**

**Prior Recorded Document(s) in Santa Clara County,
Recorded on June 20, 2017, at #23678207**

MEMORANDUM OF GROUND LEASE AGREEMENT

This Memorandum of Ground Lease Agreement is made effective this _____ day of _____, 20___, by and between the City of Cupertino, California, ("City" or "Lessor") and T-Mobile West Tower LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact ("Lessee").

1. City and Lessee have entered into a Ground Lease Agreement dated _____, 20___ (the "Agreement") whereby Lessee leased certain real property, together with access and utility easements, located in Santa Clara County, California from City (the "Premises"), all located within certain real property owned by City ("City Property"). City Property, of which the Premises is a part, is more particularly described in Exhibit A attached hereto.

2. The Premises may be used for purposes related to the wireless communication facility only. Lessee shall use the Premises for installation, operation, maintenance and use of a wireless communication facility, consisting of the equipment, improvements and facilities and the utilities, cables and wires reasonably needed to support the operation of a wireless communication facility.

Site Name: SF551 Hwy 85 4TH
Business Unit #: 827779

Documentary Transfer Tax \$ _____
_____ Computed on full value of property
_____ Computed on full value less liens and encumbrances remaining at time of sale
_____ Computed on full value of lease surpassing the 35-year term limit _____
_____ Computed on leased area of the property

Signature of Declarant or agent – Firm Name

3. The term of the Agreement is fifteen (15) years, commencing on _____, and ending on _____, unless earlier terminated.

4. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.

5. The terms, covenants and provisions of the Agreement shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of City and Lessee.

6. This Memorandum does not contain the social security number of any person.

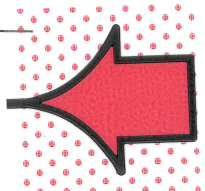
7. A copy of the Agreement is on file with City and Lessee.

[Execution Pages Follow]

IN WITNESS WHEREOF, hereunto and to duplicates hereof, City and Lessee have caused this Memorandum to be duly executed on the day and year first written above.

CITY:
CITY OF CUPERTINO, CALIFORNIA

By: _____
Print Name: _____
Title: _____



CALIFORNIA ACKNOWLEDGMENT

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

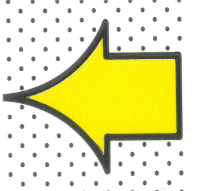
STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal



SIGNATURE OF NOTARY PUBLIC

(Seal)

[Lessee Execution Page Follows]

LESSEE:
T-Mobile West Tower LLC,
a Delaware limited liability company

By: CCTMO LLC,
a Delaware limited liability company
Its: Attorney in Fact

By: Melanie Webb
Print Name: Melanie Webb
Title: Senior Transaction Manager

State of Texas

County of Harris

Before me, Veronica Nicole Lawrence a Notary Public, on this day personally appeared Melanie Webb, Senior Transaction Manager of **T-Mobile West Tower LLC**, a Delaware limited liability company, by and through **CCTMO LLC**, a Delaware limited liability company, its attorney in fact, known to me (or proved to me on the oath of _____ or through driver's license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 11th day of April, 2019.

Veronica Nicole Lawrence

(Personalized Seal)

Notary Public's Signature

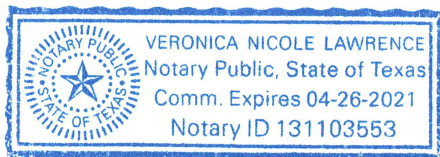


EXHIBIT A
(Legal Description of City Property)

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, CITY OF CUPERTINO, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE 1:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THAT CERTAIN 40 ACRE TRACT OF LANDS DESCRIBED IN THE DEED FROM LLOYD L. EDWARDS, ET UX, TO JOE A. SORCI, ET UX., DATED FEBRUARY 8, 1945, RECORDED IN FEBRUARY 10, 1945 IN BOOK 1243 O.R., PAGE 265, SANTA CLARA COUNTY RECORDS, DISTANT THEREON SOUTH 0 ° 08' EAST 2520.46 FEET FROM AN IRON PIPE IN THE CENTERLINE OF HOMESTEAD ROAD;

RUNNING THENCE SOUTH 0 ° 08' EAST ALONG THE EASTERLY LINE OF SAID 40 ACRE TRACT, 132.09 FEET TO AN IRON PIPE AT THE SOUTHEASTERLY CORNER THEREOF;

RUNNING THENCE SOUTH 89 ° 44' WEST ALONG THE SOUTHERLY LINE OF SAID 40 ACRE TRACT, 659.52 FEET TO AN IRON PIPE AT THE SOUTHWESTERLY CORNER THEREOF;

RUNNING THENCE NORTH 0° 08' 30" WEST ALONG THE WESTERLY LINE OF SAID 40 ACRE TRACT, 132.09 FEET;

RUNNING NORTH 89° 44' EAST 659.54 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 2.00 ACRES AND BEING A PORTION OF THE SOUTHWESTERN 1/4 OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 2 WEST, M.D.B. & M.

PARCEL TWO 2:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THAT CERTAIN 40 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM LLOYD L. EDWARDS, ET UX., TO JOE A. SORCI, ET UX., DATED FEBRUARY 8, 1945, RECORDED FEBRUARY 10, 1945 IN BOOK 1243 O.R., PAGE 265, SANTA CLARA COUNTY RECORDS, DISTANT THEREON SOUTH 0° 08' EAST, 2464.46 FEET FROM AN IRON PIPE IN THE CENTERLINE OF HOMESTEAD ROAD;

RUNNING THENCE SOUTH 0 ° 08' EAST ALONG THE EASTERLY LINE OF SAID 40 ACRE TRACT, 56.00 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 2 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM JOE A. SORCI, ET UX, TO M. JAKOVICH, ET UX., DATED FEBRUARY 18, 1948, RECORDED FEBRUARY 18, 1948

IN BOOK 1569 O.R., PAGE 37, SANTA CLARA COUNTY RECORDS; RUNNING THENCE SOUTH 89 ° 44' WEST ALONG THE NORTHERLY LINE OF SAID 2 ACRE TRACT, 659.54 FEET TO THE NORTHWESTERLY CORNER THEREOF ON THE WESTERLY LINE OF SAID 40 ACRE TRACT;

RUNNING THENCE NORTH 89 ° 44' WEST ALONG SAID LAST NAMED LINE 56 FEET; RUNNING THENCE NORTH 89 ° 44' EAST AND PARALLEL WITH THE NORTHERLY LINE OF SAID 2 ACRE TRACT, 659.55 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 0.85 ACRES AND BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 2 WEST, M.D.B. & M.

EXCEPTING FROM PARCELS ONE AND TWO ALL THAT PORTION THEREOF DESCRIBED AS PARCELS 1 AND 2 IN THE DEED FROM M. JAKOVICH, ET UX., TO THE STATE OF CALIFORNIA, RECORDED AUGUST 12, 1964 IN BOOK 6619, O.R., PAGE 556, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

EXCEPTION 1:

COMMENCING AT THE SOUTHWESTERLY CORNER OF THE 2.00 ACRE PARCEL OF LAND CONVEYED TO M. JAKOVICH, ET UX., BY DEED RECORDED FEBRUARY 18, 1949 IN BOOK 1569 IN OFFICIAL RECORDS, PAGE 37;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, SOUTH 89° 15' 33" EAST 133.92 FEET; THENCE FROM A TANGENT THAT BEARS NORTH 16 ° 12' 43" WEST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1447.00 FEET, THROUGH AN ANGLE OF 4° 35' 21", AN ARC LENGTH OF 115.90 FEET;

THENCE FROM A TANGENT THAT BEARS NORTH 12 ° 16' 35" WEST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 600.00 FEET THROUGH AN ANGLE OF 7 ° 21' 34", AN ARC LENGTH OF 77.07 FEET TO THE SOUTHERLY LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED OCTOBER 2:, 1959 IN BOOK 4582 OF OFFICIAL RECORDS, PAGE 479;

THENCE ALONG LAST SAID LINE, NORTH 89° 15' 33" WEST 91.69 FEET TO THE EASTERLY LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED DECEMBER 1, 1960 IN BOOK 4998 OF OFFICIAL RECORDS, PAGE 436;

THENCE ALONG LAST SAID LINE, SOUTH 0° 52' 03" WEST 188.09 FEET TO THE POINT OF COMMENCEMENT.

CONTAINING 0.474 OF AN ACRE, MORE OR LESS.

AS TO PARCEL 1 ABOVE, THIS CONVEYANCE IS MADE FOR THE PURPOSES OF A FREEWAY AND THE GRANTOR HEREBY RELEASES AND RELINQUISHES TO THE GRANTEE ANY AND ALL ABUTTER'S RIGHTS OF ACCESS, APPURTENANT TO GRANTOR'S REMAINING PROPERTY, IN AND TO SAID FREEWAY,

EXCEPTION 2:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THE 2.00 ACRE PARCEL OF LAND CONVEYED TO M. JAKOVICH, ET UX., BY DEED RECORDED FEBRUARY 18, 1948 IN BOOK 1569 OF OFFICIAL RECORDS, PAGE 37;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, NORTH 89° 15' 33" WEST 30.00 FEET;

THENCE NORTH 0° 52' 31" EAST 188.09 FEET TO THE LINE COMMON TO THE LANDS NOW OR FORMERLY OF SAID M. JAKOVICH, ET UX., AND OF JOE SORCI, ET UX.;

THENCE ALONG LAST SAID LINE, SOUTH 89° 15' 33" EAST, 30.00 FEET TO THE LINE COMMON TO THE LANDS NOW OR FORMERLY OF SAID M. JAKOVICH, ET UX., AND OF NORMAN J. NATHANSON, ET AL;

THENCE ALONG LAST SAID LINE, SOUTH 0° 52' 31" WEST 188.09 FEET TO THE POINT OF COMMENCEMENT.

CONTAINING 0.130 OF AN ACRE, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3. MULTIPLY THE ABOVE DISTANCES BY 1.0000495 TO OBTAIN GROUND LEVEL DISTANCES.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTIONS ARE ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3. MULTIPLY THE ABOVE DISTANCES BY 1.0000495 TO OBTAIN GROUND LEVEL DISTANCES.

TAX ID NO: 326-06-052

ADDRESS: 10555 MARY AVE., Cupertino, CA 95014