



Agenda Item 6J
Approvals: [Signature]
City Manager [Signature]
Dept. Head _____
Attorney _____
Finance _____

AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: April 3, 2012

Department: Finance and Administrative Services
Prepared By: Thomas Rendina, Municipal Services Manager

Subject: COMMUNICATIONS SITE LEASE AGREEMENT.

Summary: The City of San Clemente and T-Mobile West Corporation have been involved in negotiations for the installation of a communications site at 3895 Calle Andalucia (the "Andalucia Communications Site") for the purpose of transmission of cellular communications and for the provision of mobile/wireless communications services.

The equipment will be installed on a new eucalyptus tree Monopole at a height of 30' within the City's existing fencing and compound.

City Council previously approved a Lease Agreement on January 17, 2012 for an initial period of five (5) years. Section 2.1 erroneously indicated in that Lease that the City of San Clemente would issue building permits, where in fact, building permits for the Andalucia Site will be issued by the City of San Juan Capistrano, given the site location is within the City limits of San Juan Capistrano.

The project was reviewed by San Clemente Planning staff, who presented their findings to the City's Design Review Subcommittee which recommended that the City Manager approve the project. The City Manager concurred with staff's analysis and found the proposed project compatible with the City's Wireless Master Plan. Based upon those approvals, San Juan Capistrano subsequently approved the CUP.

Per the City's Attorney's direction, staff updated the Lease to reflect the changes noted above for approval by City Council.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute the Communications Site Lease Agreement, by and between the City of San Clemente and T-Mobile West Corporation and authorize the City Manager to approve future amendments provided that the City Manager shall not have the authority to approve a decrease in the rental rate without prior approval of the City Council.

Fiscal Impact: \$25,530 increase in annual rental income.

Attachments: Communications Site Lease Agreement

Exhibit "A1", "A2", "A3" and "A4" – Site Plans
Exhibits "T1" through "T8" – Title Sheet, General notes & specifications
Exhibit "LS-1" – Topography Survey
Exhibit "S-1", Structural Details
Exhibits "E-1", "E-2", "E-3", and "E-4" – Electrical Notes

Notification: None

6/1/2



**CITY OF SAN CLEMENTE
COMMUNICATIONS SITE FACILITY LEASE**

This Communications Site Facility Lease (the "Lease") is made and entered into this 3rd day of April, 2012 by and between the **CITY OF SAN CLEMENTE**, a California Municipal Corporation, (herein "**LESSOR**"), and **T-MOBILE WEST CORPORATION**, a Delaware corporation, (herein "**LESSEE**") (hereinafter collectively referred to as "Parties").

RECITALS

WHEREAS, LESSEE wishes to construct a communications facility (number LA33479C) consisting of a 35' by 25' equipment platform, a 35' Monopole, and equipment cabinets on a portion of that certain property commonly known as the Andalucia Site ("LESSOR's Property"), located at 27351-CS Paseo Peregrino in San Juan Capistrano, California. The LESSEE, will install a Monopole with twelve panel antennas and one GPS antenna on the Monopole, which Monopole will be conveyed to the City. The City will have the right to install additional antennae on the Monopole if space permits.

WHEREAS, the Property is owned by the LESSOR; and

WHEREAS, LESSEE wishes to lease the Facility once constructed, from said LESSOR on the terms and conditions herein for the transmission of cellular communications and for the provision of mobile/wireless communications services; and

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions, and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties to this Lease do hereby agree as follows:

1. DEMISE AND DESCRIPTION:

- 1.1 **DEMISE:** LESSOR agrees to lease a portion of that certain property described as the Andalucia Site, hereinafter known as the "Premises" and more specifically described in Exhibit "A" which is attached hereto and incorporated by reference herein. Access to the Premises shall be provided by the LESSOR. LESSOR shall provide LESSEE, LESSEE'S employees, agents, and subcontractors access over the Property to the Premises twenty-four (24) hours a day, seven (7) days a week without notice to LESSOR, at no charge to the LESSEE.

- 1.2 **DESCRIPTION:** The "Facility" to be constructed on the premises of the Andalucia site shall consist of a 35' x 25' equipment platform, containing six equipment cabinets, and a 35' Monopole and more specifically described in Exhibit "B". The Facility may be used by LESSEE for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, the transmission and the reception of cellular communications facilities including the upgrade, repair or replacement of such equipment and facilities; and environmental and other testing.

2. **LEASE TERM:**

- 2.1 **INITIAL TERM:** The initial term of this Lease shall commence on the date the LESSEE obtains all permits necessary from the City of San Juan Capistrano to construct the Facility (the "Commencement Date") or six (6) months following approval of the Lease Agreement by City Council, whichever occurs first and shall continue for five (5) years from that date ("Initial Term") unless terminated earlier pursuant to Section 6.0 below.
- 2.2 **RENEWAL TERM:** LESSOR grants LESSEE an option to renew this Lease for an additional fifteen (15) years, with a renewal in three five (5) year increments, commencing on the "Commencement Date" or six (6) months following approval of the Lease Agreement by City Council, and shall continue for five (5) years from that date unless terminated earlier. To exercise such renewal options, LESSEE shall provide written notice of such intention to LESSOR no sooner than ninety (90) days nor later than thirty (30) days prior to the expiration of the then current Lease Term. For the purpose of this Lease, the "then current Lease Term" shall mean either the Initial Term or the Renewal Term, whichever is in effect at the relevant time.

3. **PAYMENT OF RENT:** LESSEE agrees to pay to LESSOR, as rental for said premises, each month in advance, on the first of each month during the term of this Lease payable to the City of San Clemente, 100 Avenida Presidio, San Clemente, CA 92672, Attn. Accounts Receivable, Accounting Division. In addition, LESSEE agrees to do and perform all other covenants and agreements in this Lease contained.

- 3.1 **BASE RENTAL PAYMENT:** The Base Rental Payment under this Agreement shall be TWO THOUSAND AND FORTY-FOUR DOLLARS AND FOUR CENTS (\$2,044.04) per month. If the Commencement Date is a date other than the first day of each month, the Base Rental for the first calendar month shall be prorated on the basis of the number of actual days in such partial month.
- 3.2 **COST OF LIVING ADJUSTMENT:** The Base Rental Payment as set forth

in Section 3.1 above shall be adjusted annually, commencing on the first anniversary of the execution of this Agreement, by the same percentage as the increase or decrease in the Consumer Price Index ("CPI") as reflected in the "Consumer Price Index-Los Angeles-Anaheim-Riverside-All Urban Consumers, 1982-84 = One Hundred" as published by the United States Department of Labor, Bureau of Labor Statistics. The change in the CPI shall be determined by comparing the "Base Period Index" with the "Index" for the same month in the subsequent year. For the purpose of this Lease, the "Base Period Index" shall be the CPI for the calendar months which is three (3) months prior to either the date that this Lease commences or the annual anniversary of that date, whichever is applicable. By way of example, if the Lease commences on January 1, 2000, the "Base Period Index" would be the CPI for October 1999. The first Rental Payment adjustment would occur on January 1, 2002. The first Rental Payment would be adjusted by determining the change between the October 1999 CPI (the "Base Period Index") and the October 2000 CPI (the subsequent year's index). Therefore, if the October 1999 CPI equals 162.2, and the October 2000 CPI equals 167.2, the yearly increase would be 5, and the CPI will have increased by three-hundredths (3.08) percentage points. The new Rental Payment for the period January 1, 2001 through December 31, 2001 would therefore, be \$1,546.20 (\$1,500.00 [Base Rental] x 3.08% [CPI increase] = \$46.20 (increase). The new "Base Price Index" for the January 2001 adjustment would be the October 2000 Index, which as previously stated, equals 167.2. In no event shall any annual CPI adjustment be less than three percent (3%) nor more than six percent (6%) over the prior year's Base Rent.

Should the Bureau of Labor Standards discontinue the publication for the above Index, or publish the same less frequently, or alter the same in some other manner, LESSOR shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors changes in consumer prices.

- 3.3 **BASE RENTAL PAYMENT ADJUSTMENT IN YEAR FIVE:** The applicable Base Rental Payment under this Lease shall be reestablished by the Parties on the fifth anniversary of the Commencement Date of this Lease if LESSEE exercises its first option to renew under Section 2.2 of this Lease. The fair rental value shall be determined by the rent charged for comparable leased premises at comparable properties in or around Orange County, California. If LESSOR and LESSEE cannot agree on the fair rental value, the parties shall mutually select and hire an appraiser who is familiar with the comparable properties in or around Orange County, California. Said Rental adjustment shall not cause the Rental Payment to increase by more than 10% above the most recent Rental Payment or to decrease below the most recent Base Rental. The Base

Rental thereafter during any Renewal Term shall be annually increased pursuant to Section 3.2 above.

- 3.4 **LATE CHARGE:** LESSEE acknowledges that late payment by LESSEE to LESSOR of rent will cause LESSOR 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 and accounting charges. Therefore, if any installment of rent due from LESSEE is not received by LESSOR within ten (10) days after the same becomes due; LESSEE shall pay to LESSOR an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that LESSOR will incur by reason of late payment by LESSEE. Acceptance of any late charge shall not constitute a waiver of any right of termination as contained in Section 10 below with respect to the overdue amount, or prevent LESSOR from exercising any of the other rights and remedies available to LESSOR.

4. **LESSEE'S OBLIGATION:** LESSEE recognizes and understands that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of property taxes levied on such interest. LESSEE shall timely pay all property taxes and assessments directly attributable to LESSEE's possessory interest.

5. **CONSTRUCTION OF IMPROVEMENTS:**

- 5.1 **LESSEE'S CONSTRUCTION:** The purpose of this Lease is to provide LESSEE a site for the placement and use of the Facility, and for no other use whatsoever. LESSEE shall have the right, during the Lease Term, to develop, construct, alter, remove, demolish, restore and remodel the following improvements on the Premises and be allowed to operate the Facility as follows:
- (a) Antenna Structure: Described in Exhibit A
 - (b) Communications Facilities: Described in Exhibit A
 - (c) Site Equipment: LESSEE shall provide all Site Equipment required for the installation and operation of the Facility. The Site Equipment is and shall remain the sole property of LESSEE, shall not be deemed fixtures, and may be removed from the Premises by LESSEE at any time.
 - (d) Frequency/s: 1710 - 2155 MHz

- (e) Access to Site: LESSEE's employees, agents and subcontractors shall have access over the Property to the Premises twenty-four (24) hours a day, seven (7) days a week without notice to LESSOR or charge to LESSEE.
- (f) Construction of Improvements: All improvements made to the Premises by LESSEE shall be developed, constructed, altered, restored, and/or remodeled in a good and workmanlike manner, at LESSEE's expense, in accordance with the requirements of all laws, ordinances, and regulations applicable thereto, including zoning requirements and building code requirements of the City of San Clemente (including compliance with the CUP process prescribed by the City of San Clemente Ordinance No. 1129, if applicable), the County of Orange, and any municipal or other governmental agency having jurisdiction over the Premises at the time the improvements are constructed. LESSOR agrees to cooperate with LESSEE and execute all documents reasonably required in connection with applying for any municipal permits, zoning variances, or conditional use permits in connection with the construction of the aforementioned improvements. It is understood and agreed that such cooperation and execution of documents shall not be implied to include any expenditures of funds on the part of LESSOR or any implied promise or warranty that such permits, discretionary, or otherwise, will be issued to LESSEE. Notwithstanding anything in this Lease to the contrary, prior to commencement of construction LESSEE, as its expense, shall submit a location and installation plan to LESSOR for review and approval by LESSOR's Utilities Manager. If LESSOR's Utilities Manager (or his/her designee) does not respond in writing to LESSEE within ten (10) days following LESSEE's request for approval, such request will be deemed to have been approved by LESSOR. Once commenced, any and all improvements to be made by LESSEE with respect to the installation of the Facility and the Premises shall be diligently pursued to completion.
- 5.2. **MECHANIC'S LIENS**: LESSEE shall not suffer or permit to be enforced against the Premises, or any part thereof, and shall defend, indemnify, and hold LESSOR harmless from any mechanic's, material suppliers', contractors', tax, or subcontractors' liens arising from any claim for damage, or growing out of the work of any construction, repair, restoration, replacement, or improvement made by or alleged to have been made by or on behalf of LESSEE. LESSEE shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Premises. If LESSEE shall in good faith contest the validity of any such lien, claim, or demand, then LESSEE shall, at its expense, defend itself and LESSOR against same and shall

pay and satisfy any settlement or adverse judgment that may be entered thereupon prior to the execution thereof. In the event of any such contest, LESSEE shall provide LESSOR with a security bond in a form and amount LESSOR deems sufficient to allow the lien of record to be discharged as a matter of law.

- 5.3. **CARE DURING CONSTRUCTION:** LESSEE shall exercise great care during construction of the Improvements. Any and all damage to improvements, including landscaping and vegetation located on or about the property, shall be repaired and/or replaced with like size and various types of plant materials. All applicable City standards and specifications shall be followed. LESSOR shall approve all work prior to commencement.

6. **TERMINATION:**

- 6.1 **LESSOR'S RIGHT TO TERMINATE:** LESSOR may pursue any remedies available to it under applicable law, including, but not limited to, the right to terminate this Lease, upon the earliest of any of the following events: (a) LESSEE's failure to pay rent within fifteen (15) days following notice of nonpayment; (b) LESSEE's failure to comply with any term, covenant, or condition of this Lease after LESSEE has been given notice of the violation and has had thirty (30) days to cure same or, if such default is not curable within such thirty (30) day period, has not proceeded to commence such cure within such thirty (30) day period and diligently proceeds to completion; (c) interference by LESSEE's Site Equipment with other electrical or radio frequency equipment installed on or around the Property prior to the Commencement Date, which interference is not cured by LESSEE within ten (10) days following notice thereof; or (d) interference by LESSEE's Site Equipment with hydrological equipment installed on or around the Property prior to the Commencement Date, which interference is not cured by LESSEE within ten (10) days following notice thereof. Likewise, LESSOR will not permit or suffer the installation of any future equipment which (i) results in technical interference problems with LESSEE'S then existing equipment or (ii) encroaches onto the Premises.
- 6.2 **LESSEE'S RIGHT TO TERMINATE:** LESSEE may terminate this Lease without further liability for any reason whatsoever upon ninety (90) days written notice to LESSOR. Upon termination, all prepaid rent will be retained by LESSOR unless such termination is due to LESSOR's failure of proper ownership or authority, or such termination is a result of LESSOR's default hereunder. In the event LESSEE terminates the lease prior to commencement of construction of the improvements, LESSEE's obligation to construct the Improvements shall terminate without further liability.

6.3 **OWNERSHIP OF IMPROVEMENTS UPON TERMINATION:** Upon termination of this Lease for any reason whatsoever, LESSEE shall transfer to LESSOR title to all real property improvements constructed by LESSEE (i.e., communication building and monopole) but not communication equipment constructed upon the Premises) free, clear and unencumbered of any monetary encumbrance or other restriction or title exception of any kind or nature created by LESSEE other than as permitted by LESSOR in writing. LESSEE shall indemnify, defend and hold LESSOR free and harmless from and against any claims, losses, damages, or expenses, including without limitation attorney's fees and costs, arising out of any controversy involving title to the improvements. LESSEE must remove all communication equipment within ninety (90) days of the termination of this Lease.

7. **INTERFERENCE:**

7.1 **LESSEE'S OBLIGATIONS:** Prior to occupancy and operation of communication equipment by LESSEE or its agents, assigns or lessees within LESSOR's portion of the Building or Tower, LESSEE agrees to:

- (a) Submit to LESSOR within 45 days prior to operation, proposed plans designating equipment locations in the Building, antenna type, size and locations on the Tower, heights above ground on LESSOR's existing towers, along with operating frequencies, effective radiated power, and other necessary on-air technical data at LESSOR's discretion for LESSOR's review and approval.
- (b) Install or cause to be installed, all equipment according to generally accepted standard engineering practices and in a good and workmanlike manner.
- (c) Use reasonable efforts to mitigate any interference on existing radio frequency equipment of LESSEE within 10 days of written notification or interference.
- (d) Shall include in all Leases between LESSOR and future lessees on the Property a covenant that the LESSEE shall not interfere with other electrical or radio frequency equipment previously installed on or around the Property and that if the LESSEE is not able to mitigate the interference, the Lease shall provide for termination thereof.

7.2 **LESSOR'S OBLIGATION:** LESSOR shall include in all leases between

LESSOR and future LESSEE's on the Property a covenant that the LESSEE shall not interfere with other electrical or radio frequency equipment previously installed on or around the Property and that if the LESSEE is not able to mitigate the interference, the lease shall provide for termination thereof. Likewise, LESSOR will not permit or suffer the installation of any future equipment which (i) results in technical interference problems with LESSEE's then existing equipment or (ii) encroaches onto the Premises.

- 7.3 **NON-INTERFERENCE:** The communication equipment and the use thereof shall not interfere with the use of any other communication or similar equipment of any kind and nature owned or operated by LESSOR or other occupants of the Property existing as of the Commencement Date, except as may be permitted by applicable laws; provided; however that subsequent to the installation by LESSEE of the Facility, LESSOR agrees not to install and to exercise commercially reasonable effort to not allow installation of new equipment on the Premises if such equipment causes interference with LESSEE's operations. All interference rules and regulations promulgated by the Federal Communications Commission.

8.0 **CO-LOCATION:**

- 8.1 **RIGHT TO LEASE TO THIRD PARTY:** LESSOR, in LESSOR'S sole and absolute discretion and in compliance with the terms of this Lease, may elect to enter into a similar Lease with another carrier ("Potential Carrier") to place an antenna and/or necessary improvements on the Property. LESSEE hereby agrees that LESSOR may elect to place any such antenna either upon the Pole constructed by LESSEE pursuant to this Agreement or upon a second pole located upon the Property constructed by the Potential Carrier pursuant to the terms of this Section 8.
- 8.2 **CO-LOCATION AGREEMENT:** In the event LESSOR elects to enter into a Lease with a Potential Carrier, LESSEE and any Potential Carrier shall enter into a separate written co-location agreement ("Co-location Agreement") subject to the reasonable approval of the City Manager of the City of San Clemente or its designee in a form substantially similar to Exhibit "C-1" attached hereto or Exhibit "C-2" attached hereto (as may be applicable) delineating proper placement of any Potential Carrier's antenna so as to comply at all times with all non-interference rules of the Federal Communications Commission ("FCC"). In the event an antenna is placed upon the Pole, the Co-location Agreement shall also set forth the maintenance, utility, indemnification and other obligations of the parties as to the Pole and shall provide that LESSEE may recover from any Potential Carrier the Potential Carrier's pro rata share of the cost of the Pole construction.

Any Lease entered into between LESSOR and a Potential Carrier shall reference the obligation to enter into a Co-location Agreement and the obligation of the Potential Carrier to comply with the applicable FCC non-interference rules. LESSEE hereby covenants to exercise good faith and use its best efforts to enter into a Co-location Agreement acceptable to all parties. In the event that LESSEE and a Potential Carrier are unable to agree as to the terms of the Co-location Agreement, LESSEE and the Potential Carrier, hire a qualified engineer mutually acceptable to both parties to determine the placement of the antenna so as to comply with FCC regulations. Should LESSEE and the Potential Carrier fail to agree upon a qualified engineer within thirty (30) days of execution of the Potential Carriers Lease with LESSOR, the dispute shall be resolved in accordance with FCC procedures as amended from time-to-time. LESSEE'S failure to comply with the provisions of this Section shall be deemed a material default, and LESSOR shall have the right to terminate this Lease in accordance with Section 6.1 above.

- 8.3 **RELEASE OF LESSOR:** LESSEE hereby releases LESSOR, its officers, and employees from any responsibility or liability occurring by reason of or arising out of interference with LESSEE's communication configurations, equipment and/or frequency caused by the location of any Potential Carrier upon the Pole, the Premises, or the Property in conformity with the provisions of this Lease, or by pre-existing communications operating upon the commencement of this Lease.

9. **REPAIRS AND MAINTENANCE:**

- 9.1 **NO OBLIGATION OF LESSOR:** LESSEE agrees that LESSOR shall be under no obligation to repair, rebuild or replace the Premises or the Right-of-Way area or any Improvements located thereon during the term of this Lease, except LESSOR may be liable to LESSEE for any damage arising out of the negligence or willful misconduct of LESSOR or its agents.
- 9.2 **LESSEE'S OBLIGATION:** Notwithstanding the provisions of paragraph 5.1, LESSEE shall, at LESSEE's sole expense and cost, keep and maintain that portion of the Premises and Improvements located thereon not transferred to LESSOR, and any and all facilities appurtenant under LESSEE's control thereto, including any landscaping, in a good and safe order and repair and in a clean and orderly condition. Not by way of limitation of the foregoing, LESSEE shall promptly remove any accumulation of trash, weeds, debris, and graffiti on the Premises. LESSEE shall make any and all additions, alterations, repairs or improvements in and about the Premises which may be required by law, and shall otherwise observe and comply with all public laws, ordinances and regulations which are from time to time made applicable to the Premises. LESSEE shall indemnify, defend and hold LESSOR harmless

against all actions, claims and damages (including without limitation, reasonable attorney's fees) by reason of LESSEE's failure to comply with or perform the provisions of this Section. LESSEE is aware of and waives the provisions of California Civil Code Sections 1941 and 1942 with respect to any obligation LESSOR may have during the term of this Lease regarding the tenantability of the Premises and LESSEE's right to make repairs and deduct the expenses of such repairs from rent.

10. **UTILITIES AND PROVISION OF SERVICE:** LESSEE shall determine the availability of and shall, at its sole cost and expense, cause to be installed in, on, and about the Premises all facilities necessary to supply thereto all water, sewage, gas, electricity, telephone, and other similar services required to service the Premises. LESSOR shall allow LESSEE to have its own electrical metering equipment installed. LESSEE shall obtain all necessary approvals for the installation of the meter. An electrical plan shall be submitted to the LESSOR and approved prior to commencement of such work. LESSOR agrees to cooperate with LESSEE in its efforts to obtain such utility service. During the Lease term, LESSEE agrees to pay when due all charges for water, sewage, gas, electricity, and all other utility services of every kind and nature supplied to and used by LESSEE on the Premises. LESSOR shall be responsible for its own electrical and other utility service and for the regular payment of electrical and other utility charges attributable to the Facility other than the Premises.
11. **DAMAGE OR DESTRUCTION OF IMPROVEMENTS TO PREMISES:**
- 11.1 **LESSOR'S OBLIGATION:** LESSOR shall have no duty or obligation to rebuild the Facility or the improvements thereon if such Facility or improvements are substantially damaged during the Lease Term, in whole or in part by any casualty. LESSOR will give LESSEE (a) notice of such casualty within thirty (30) days after the date of the casualty and (b) the right to terminate in sixty (60) days from said casualty date. In the event LESSOR chooses not to rebuild the Facility or improvements thereon, LESSEE shall be entitled to build a new equipment shelter and tower for its own use on the leased Premises.
- 11.2 **WAIVER OF CIVIL CODE SECTIONS:** LESSEE is aware of and, by entering into this Lease, waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises.
- 11.3 **CONDEMNATION:** In the event of condemnation of the Premises, unless LESSEE is allowed by the condemning authority to continue its operations on the Premises, this Lease shall terminate as of the date title to the Premises vests in the condemning authority or LESSEE is required to cease its operations, whichever is earlier. LESSEE shall be entitled to share in the proceeds of any condemnation, and LESSEE's share shall include the value of any improvements, which are transferred to the

condemning authority, moving expenses, and prepaid rent and business dislocation expenses. LESSEE shall not be allowed to recover for the value of its leasehold interest.

12. **ASSIGNMENT AND SUBLEASING:**

12.1 **ASSIGNMENT:** LESSEE shall not voluntarily assign or transfer its interest under this Lease or in the Premises without first obtaining the prior written consent of LESSOR, which consent shall be not unreasonably withheld, delayed or conditioned. The transfer of the rights and obligations of LESSEE to a parent, subsidiary, or other affiliate of LESSEE, or to any successor in interest or entity acquiring fifty-one (51%) or more of LESSEE's membership interests or assets, shall not be deemed an assignment and LESSOR's consent shall not be required for such transfer. Any assignment without LESSOR's consent (when such consent is required) shall be voidable and, at LESSOR's election, shall constitute cause for exercise of LESSOR's remedies under applicable law, including termination of the Lease. No consent to any assignment shall constitute a further waiver of the provisions of this Section. Notwithstanding the foregoing, it is understood that LESSEE shall not be released from liability hereunder by virtue of any assignment. As a condition precedent to any such assignment which requires LESSOR's consent, LESSEE agrees to provide written notice to LESSOR of its intention to assign at least thirty (30) days before the proposed effective date of any such proposed assignment which notice shall include the identity of the proposed assignee, copies of the proposed assignment documentation and current financial statements of the proposed assignee. As a further condition precedent to any assignment, the assignee must assume, in writing, all of LESSEE's obligations under this Lease.

12.2 **SUBLEASING:** LESSEE shall not sublease any portion of the Premises except as expressly provided herein. LESSEE shall be permitted to sublease portions of the Premises to a wholly-owned subsidiary of LESSEE, provided LESSEE provides LESSOR with express written notice of such sublease.

13. **RENEWAL/HOLDING OVER:** Upon the expiration or termination of this Lease, LESSEE shall surrender the Premises to LESSOR. If LESSEE shall remain in possession of the Premises after the expiration or termination of the Lease, with the consent of LESSOR, either express or implied, such holding over shall be construed to create a tenancy from month to month subject to all the covenants, conditions, and obligations hereof, and LESSEE hereby agrees to pay LESSOR, as monthly rental, an amount equal to one hundred twenty-five percent (125%) of the most recent monthly rental price. Nothing above shall be construed to give LESSEE any rights to so hold over and to continue in possession of the Premises after the expiration of the Lease Term without the express consent of LESSOR.

14. **MISCELLANEOUS:**
- 14.1 **INSPECTION:** LESSOR reserves the right for itself and its employees, agents, and representatives to enter upon the Premises at any reasonable time and after reasonable notice to LESSEE for the purpose of attending to LESSOR's obligations under this Lease, provided that LESSOR and its employees, agents, and representatives shall make best efforts not to disturb, disrupt, damage, move, alter, turn off, adjust or otherwise adversely affect LESSEE's operations or Site Equipment.
- 14.2 **NO WAIVER:** No covenant, term, or condition thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed. Any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by LESSOR of performance other than full performance by LESSEE after the time the performance shall have become due shall not constitute a waiver by LESSOR of the breach or default or default of any covenant, term, or condition unless otherwise expressly agreed to by LESSOR in writing.
- 14.3 **ATTORNEY'S FEES AND COSTS:** If either Party hereto shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by LESSOR for the recovery of rent or possession of the Premises, the prevailing Party shall be entitled to have and recover from the other Party the prevailing Party's reasonable fees and costs (including attorneys' fees), which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to a judgment.
- 14.4 **INTERPRETATION:** The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate paragraph hereof. The captions of the articles and paragraphs of this Lease are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or construction.
- 14.5 **INTEGRATION AND GOVERNING LAW:** This Lease represents the entire understanding of LESSOR and LESSEE as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Lease. This Lease shall be governed by the laws of the State of California and construed as if drafted by both LESSOR and LESSEE. This Lease may not be modified, altered, or amended except in writing signed by both LESSOR and LESSEE.

- 14.6 **LEASE BINDING ON HEIR AND ASSIGNS:** Each of the terms, covenants, and conditions of this Lease shall extend to, be binding upon, and inure to the benefit of not only LESSOR and LESSEE, but each of their respective heirs, representatives, administrators and assigns. Whenever in this Lease reference is made to either LESSOR or LESSEE, the reference shall be deemed to include, whenever applicable, the heirs, legal representatives, and assigns of each of the parties, the same as if in every case expressed.
- 14.7 **CORPORATE AUTHORITY:** Each party executing this Lease on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation and that this Lease is binding upon said corporation in accordance with its terms.
- 14.8 **NOTICES:** Any written notices required pursuant to this Lease shall be made by certified or registered mail, return receipt requested, or reliable overnight courier and delivered to the following address:

To LESSOR: City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672
Attn: Communications Dept.
(949) 361-8258

With a Copy to: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Attn: Jeffrey M. Oderman, Esq., City Attorney
Phone: (714) 641-5100

To LESSEE: T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator/LA33479C

With a Copy to: T-Mobile West Corporation
2008 McGaw Avenue
Irvine, CA 92614
Attn: Lease Administration Manager/LA33479C

- 14.9 **PROPERTY:** LESSOR warrants that: (i) LESSOR owns the Property in fee simple and has rights of access thereto; (ii) LESSOR has full right to make this Agreement; and (iii) LESSOR covenants and agrees with LESSEE that upon LESSEE paying the Rent and observing and performing all the terms, covenants, and conditions on LESSEE's part to be observed and performed, LESSEE may peacefully and quietly enjoy the Premises, subject, nevertheless, to the terms and conditions of this Agreement. LESSOR warrants that the making of this Agreement and the performance thereof will not violate the provision of any mortgage, lease, or other agreements under which LESSOR is bound and which restricts the LESSOR in any way with respect to the use or disposition of the Property.
15. **AMENDMENTS:** The City Council assigns the City Manager signature authority to execute future Lease Amendments and extensions for periods not more than five (5) years each and provided that the City Manager shall not have the authority to approve a decrease in the rental rate without the prior approval of the City Council.

IN WITNESS WHEREOF, the parties hereto caused this Lease to be executed by their duly authorized officers.

CITY OF SAN CLEMENTE

Dated: _____

By: _____

Its: _____

Dated: _____, 20__

TAX I.D. #: 95-6000775

ATTEST:

CITY CLERK of the City of
San Clemente, California

LESSEE
T-Mobile West Corporation
a Delaware corporation

Approved as to form:

By: _____

City Attorney: _____

Title: _____

Dated: _____

TAX I.D. #: _____

6/21/17

EXHIBIT "A"

DESCRIPTION OF PREMISES

This exhibit is attached to and incorporated into certain Communications Site Lease ("Lease") dated April 3rd, 2012 by and between the CITY OF SAN CLEMENTE, a California Municipal Corporation, as Lessor and T-MOBILE WEST CORPORATION ("Lessee") and reference the location and/or legal description of the property subject to the Lease.

The approximately 679 square feet of lease area more specifically described in Exhibits "A-1" and "A-2" situated in the City of San Juan Capistrano, County of Orange, State of California is described as follows;

27351-CS Paseo Peregrino, San Juan Capistrano, California 92675

Also know as Assessor's Parcel number 675-321-03

6 Ji-18