



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 6, 2020

Agenda Item 6K

Approvals:

City Manager ES

Dept. Head _____

Attorney _____

Finance JL

Department: Finance & Administrative Services
Prepared By: Jonathan Lightfoot, Economic Development Officer
Matthew Schmelzel, Management Analyst

Subject: **COMMUNICATIONS SITE LEASE AGREEMENT: VERIZON MONOPALM AT CITY YARD**

Fiscal Impact: Yes. The proposed site lease agreement would generate \$40,739.16 in General Fund revenue in the first year, with 3% annual increases in future years.

Summary: Staff recommends that Council consider the attached lease with Verizon Wireless for a monopalm cellular tower and related equipment at the City Yard at 380 E. Avenida Pico.

Background: Verizon Wireless requests a lease to support the installation of a new macro cellular facility disguised within an artificial palm tree on the City owned property at 380 E. Avenida Pico which houses the City's water treatment plant. The 17.54 acre lot is currently developed with multiple industrial buildings and facilities related to the City's water treatment operations. The proposed lease area would be about 400 square feet adjacent to parking stalls on the west side of the property. The parcel is bounded by Avenida Pico on the north, the Segunda Deschecha channel on the south, the Uhaul commercial property to the west, and Calle De Los Molinos on the east. Immediately surrounding land uses are industrial. There are residences across the Avenida Pico right-of-way in the Sea Summit neighborhood, about 400 feet away from the proposed installation location. The monopalm would be sited behind 50 existing mature palm trees that line the drive aisle entry into the City yard.

Discussion: New macro cellular facilities on public property require either a City Antenna Permit (CAP) or a Conditional Use Permit as well as the City's consent to use the property through a lease agreement. Planning staff supports the lease location because the City Yard is identified within the City's Wireless Master Plan (WMP) as one of the public properties that could be utilized to fill coverage gaps amongst wireless providers. The WMP indicates a pre-approved design for the City Yard: an antenna directly attached to an existing building on site. However, the applicant determined that mounting an antenna to the side of an existing building at the City Yard would not meet their coverage standards and elected to propose the freestanding macro facility, which necessitates a Conditional Use Permit (CUP) instead of the streamlined City Antenna Permit (CAP). In addition to the CUP approval, the project proponent must enter into a lease agreement with the City prior to erecting any antenna.

The project design was approved by the Planning Commission; however, the decision was appealed by a member of the public. The appeal will be a *de novo* hearing at the

City Council's October 20, 2020 regular meeting. That hearing will discuss the merits of the siting and design and consistency with City policy documents, such as the Coastal Land Use Plan. Those elements need not be discussed here. Council only needs to discuss whether they are amenable to the terms of a proposed lease. If Council supports the lease agreement, then they will review the design aspects and other relevant elements of the CUP entitlement, including any issues raised by the appeal, at the October 20 public hearing. If a lease is not supported, then the subsequent public hearing would note that the project is incomplete as it was unable to secure property owner authorization. All wireless projects and antennas must comply with all applicable Federal Communications Commission (FCC) regulations.

Recommended

Actions: STAFF RECOMMENDS THAT the City Council authorize the Mayor Pro Tem to enter into the attached lease agreement with Verizon Wireless.

Attachments: 1. Draft Lease Agreement with Verizon Wireless at 380 E. Avenida Pico
2. Project plans



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

This Communications Site Facility Lease (the "Lease") is made and entered into this day of _____, 2020 by and between the **CITY OF SAN CLEMENTE**, a California Municipal Corporation, (herein "**LESSOR**"), and **VERIZON WIRELESS** (herein "**LESSEE**") (hereinafter collectively referred to as "Parties" or individually as the "Party").

RECITALS

WHEREAS, LESSEE wishes to construct a new macro cellular facility disguised as an artificial palm tree consisting of approximately 400 sq. ft. of ground space with a (i) 390 sqft enclosure for equipment that includes an emergency generator and radio cabinets (ii) 43-foot tall monopalm with antennas and related equipment on a portion of that certain property commonly known as the Water Treatment Facility Site ("Property"), located at 380 Ave. Pico.

WHEREAS, the Property is owned by LESSOR; and

WHEREAS, LESSEE wishes to lease the Premises, as defined below, from said LESSOR on the terms and conditions herein for the transmission of and for 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 Water Treatment Facility 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 from a public right of way 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 LESSEE.
- 1.2 **DESCRIPTION:** The "Facility", shall consist of approximately 400 sq. ft. of ground space for a (i) 390 sq. ft. equipment enclosure, that includes an emergency generator, radio cabinets, and electrical control panels (ii) 43-foot tall monopalm with (12) 6 ft panel antennas, eighteen (18) remote radio units (rrus), (3) surge protector units & a 2 ft. diameter microwave antenna and all necessary utility connections, all as more specifically described in Exhibits "A-

0", A-1", "A-2", "A-2.1", "A-3", "A-4", and "A-5" attached hereto and made a part hereof. The Facility may be used by LESSEE for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, 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 first day of the month following full execution of this Lease (the "Commencement Date"), and shall continue for five (5) years from that date ("Initial Term") unless terminated earlier pursuant to Section 6.0 below.
- 2.2 **RENEWAL TERMS:** LESSOR grants LESSEE an option to renew this Lease for an additional fifteen (15) years, with a renewal in three five (5) year increments (each five (5) year increment, a "Renewal Term"), commencing upon expiration of the Initial Term, and shall continue for five 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, 910 Calle Negocio, San Clemente, CA 92673, Attn: Accounts Receivable, Accounting Division. In addition, LESSEE agrees to do and perform all other covenants and agreements contained in this Lease.

- 3.1 **BASE RENTAL PAYMENT:** The Base Rental Payment under this Lease shall be Three Thousand Three Hundred Ninety-Four DOLLARS and Ninety- Three CENTS (\$3,394.93) per month. If the Commencement Date is a date other than the first day of a month, the Base Rental Payment for the first calendar month shall be prorated on the basis of the number of actual days in such partial month.
- 3.2 **ANNUAL RENTAL INCREASES:** Commencing on the first (1st) annual anniversary of the Commencement Date and on each annual anniversary thereafter, the Base Rental Payment shall be increased by an amount equal to three percent (3%) of the Base Rental Payment in effect during the immediately preceding year. Each new rental amount shall also be referred to as the "Base Rental Payment."
- 3.3 **LATE CHARGE:** LESSEE acknowledges that late payment by LESSEE to LESSOR of the Base Rental Payment 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 the Base Rental Payment 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 Base Rental Payment 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 a 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 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, repair, operate, demolish, restore and remodel the following improvements on the Premises and be allowed to operate the Facility as follows:

- (a) Antenna Structure: 43-foot tall monopalm with antennas and related equipment.
- (b) Communications Facilities: An equipment enclosure and related equipment located on a 390 sq. ft. portion of ground space.
- (c) Site Equipment: LESSEE shall provide all site equipment required for the installation and operation of the Facility ("Site Equipment"). 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) 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.
- (e) 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, at 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 with respect to the Premises. 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 in its reasonable discretion 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 type of plant materials. All applicable City standards and specifications shall be followed. LESSOR shall reasonably 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 any Base Rent Payment 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 prosecutes the cure 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 LESSEE does not commence curing within ten (10) days following notice thereof; (d) interference by LESSEE's Site Equipment with hydrological equipment installed on or around the Property prior to the Commencement Date, which interference LESSEE does not commence curing 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 Base Rent Payments 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 ("Retained Improvements") constructed by LESSEE (i.e., communication building and monopole) but not the Site 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. LESSOR acknowledges and agrees that it shall take possession of the Retained Improvements in their then "AS IS" condition, and that LESSEE makes no representation or warranty regarding their condition or fitness for any particular purpose and that LESSEE shall incur no further liability therefore.

7. **INTERFERENCE:**

- 7.1 **LESSEE'S OBLIGATIONS:** Prior to occupancy and operation of the communication equipment by LESSEE or its agents, assigns or lessees within LESSOR's portion of the Building or Pole (defined below), 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 Pole, 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 reasonable discretion for LESSOR's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

- (b) Install or cause to be installed, all equipment according to generally accepted standard engineering practices used in the communication industry and in a good and workmanlike manner.
- (c) Use reasonable efforts to mitigate any interference on existing radio frequency equipment of LESSEE within ten (10) days of written notification or interference.

7.2 **LESSOR'S OBLIGATION:** LESSOR 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. 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 Site Equipment or (ii) encroaches onto the Premises.

7.3 **NON-INTERFERENCE:** The Site 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 efforts to not allow installation of new equipment on the Property if such equipment causes interference with LESSEE's operations.

8. **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 Lease ("**Pole**") 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 with respect to the Pole, 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 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 shall have the right to charge such Potential Carrier rent, as well as recover from any Potential Carrier the Potential Carrier's pro rata share of the cost of the antenna structure 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 commercially reasonable efforts to enter into a Co-location Agreement reasonably 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 shall not be obligated to enter into the Co-location Agreement.

- 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 above, LESSEE shall, at LESSEE's sole expense and cost, keep and maintain that portion of the Premises and improvements located thereon, 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, reasonable wear and tear excepted. Not by way of limitation of the foregoing, LESSEE shall remove any accumulation of trash, weeds, debris, and graffiti on the Premises within seventy-two (72) hours of receipt of notice of the same. 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) incurred by LESSOR to the extent resulting 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 Base Rent Payments.

- 9.3 **LESSEE'S CONTRACTOR:** LESSEE shall be responsible for any and all damage to City equipment or property to the extent caused by LESSEE or LESSEE's contractors and shall be responsible for the repair of any such damage to the extent caused by their act hereunder. LESSEE shall be responsible for the replacement of all plant materials damaged by LESSEE or

LESSEE's contractors during the construction of the Premises including trees, shrubs, ground cover, mulch, pebble bark and similar materials. The full cost of such replacement, including the cost of labor shall be borne by LESSEE.

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, such approval not to be unreasonably withheld, conditioned or delayed. 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. Notwithstanding the foregoing, if as a result of a condemnation of the Premises, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation is expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, terminate this Lease as of the date the condemning authority takes such possession. 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 in the market as defined by the FCC in which the Property is located, 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 within ninety (90) days following 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 Base Rent Payment. 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. **MUTUAL WAIVER OF DAMAGES AND INDEMNIFICATION:**

14.1 Except as provided below, neither party will be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

- 14.2 With respect to third-party claims, LESSEE shall and indemnify, defend, and hold harmless LESSOR and its officers, officials, directors, shareholders, employees, and agents, and each of them, from and against any and all claims, actions, damages, liabilities and expenses (including without limitation reasonable attorneys' fees) to the extent arising from or out of any claim or action filed against LESSOR as a result of LESSEE's use of the Premises or use of the Site Equipment on the Premises, except to the extent such claim or action is due, in whole or in part to the negligence or willful misconduct to LESSOR, in which case, LESSEE's indemnification obligation shall be proportionately reduced in direct proportion to the extent LESSOR's negligence or willful misconduct resulted in the claims, actions, damages, liabilities and expenses.
- 14.3 With respect to third-party claims, LESSOR shall and indemnify, defend, and hold harmless LESSEE and its officers, officials, directors, shareholders, employees, and agents, and each of them, from and against any and all claims, actions, damages, liabilities and expenses (including without limitation reasonable attorneys' fees) to the extent arising from or out of any claim or action filed against LESSEE as a result of LESSOR's operation of Lessor's Property, except to the extent such claim or action is due, in whole or in part to the negligence or willful misconduct to LESSEE, in which case, LESSOR's indemnification obligation shall be proportionately reduced in direct proportion to the extent LESSEE's negligence or willful misconduct resulted in the claims, actions, damages, liabilities and expenses.
- 14.4 Neither Party has any obligation to defend or indemnify the other unless the Party seeking defense and indemnity ("Indemnified Party") provides prompt written notice of any such claims to the party from which defense and indemnity is sought under this Paragraph 14 ("Indemnifying Party"). The Indemnifying Party also agrees and acknowledges that it shall not admit any liability, settle, compromise, pay or discharge any such claims without the advance written consent of the Indemnified Party and such consent will not be unreasonably withheld, conditioned or delayed.

15. **INSURANCE:**

15.1 **LESSEE** agrees, at its sole expense, and at all times during the term of this Lease, to maintain in full force, or cause to be maintained in full force, a policy of commercial general liability insurance, including bodily injury and property damage, with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage, and Two Million Dollars (\$2,000,000) general aggregate. Any deductible or self-insured retentions shall be the sole responsibility of LESSEE. Such policies shall insure against liability for injury to persons and/or property and death of any person or persons which may occur as a result of or in connection with the existence and/or operation of **LESSEE'S** equipment in, on or about the **CITY'S** property. Each such policy of insurance shall:

- (1) be issued by companies licensed, authorized or permitted to do business in the State of California that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current

Best's Key Rating Guide.

- (2) include as additional insureds CITY, CITY's officers and employees. A blanket additional insured endorsement shall accompany the insurance certificate.
- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) cover the operations of LESSEE pursuant to the terms of this Agreement; and
- (5) be written on an occurrence and not a claims made basis.

16 **MISCELLANEOUS:**

- 16.1 **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 and in the presence of a LESSEE representative 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.
- 16.2 **NO WAIVER:** No covenant, term, or condition contained herein 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.
- 16.3 **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.
- 16.4 **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.

- 16.5 **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.
- 16.6 **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.
- 16.7 **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.
- 16.8 **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
910 Calle Negocio
San Clemente, CA 92673
Attn: Finance
(949) 361-8200

With a Copy to: Best, Best & Krieger
18101 Von Karman, Suite 1000
Irvine, CA 92612
Attn: Scott Smith, Esq., City Attorney
Phone: (949) 263-2600

To LESSEE: Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Rachael Davidson
Site: Water Treatment Facility

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

- 16.9 **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 Lease; and (iii) LESSOR covenants and agrees with LESSEE that upon LESSEE

paying the Base Rental Payment 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 Lease. LESSOR warrants that the making of this Lease 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.

17. **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.

[SIGNATURE ON FOLLOWING PAGES]

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

APPROVED AS TO FORM:

CITY ATTORNEY

Dates: _____

LESSEE

VERIZON WIRELESS

By:

Its:

By: _____

Name:

Its:

Date: _____

EXHIBIT A

DESCRIPTION OF PREMISES

This exhibit is attached to and incorporated into certain Communications Site Lease ("Lease") dated _____, 2020 by and between the CITY OF SAN CLEMENTE, a California Municipal Corporation, as Lessor and Verizon Wireless ("Lessee") and reference the location and/or legal description of the property subject to the Lease.

All that real property situated in the City of San Clemente, County of Orange, State of California is described as follows:

380 Avenida Pico, San Clemente, California 92672

Also known as Assessor's Parcel Number 691-433-01

REV.	DATE	DESCRIPTION	BY
1	08-18-18	ISSUE FOR PERMITS	ML
2	08-23-18	REVISIONS TO PERMITS	ML
3	08-23-18	REVISIONS TO PERMITS	ML
4	08-23-18	REVISIONS TO PERMITS	ML
5	08-23-18	REVISIONS TO PERMITS	ML
6	08-23-18	REVISIONS TO PERMITS	ML
7	08-23-18	REVISIONS TO PERMITS	ML
8	08-23-18	REVISIONS TO PERMITS	ML
9	08-23-18	REVISIONS TO PERMITS	ML
10	08-23-18	REVISIONS TO PERMITS	ML

Jacobs
 Challenging Today
 Improving Tomorrow

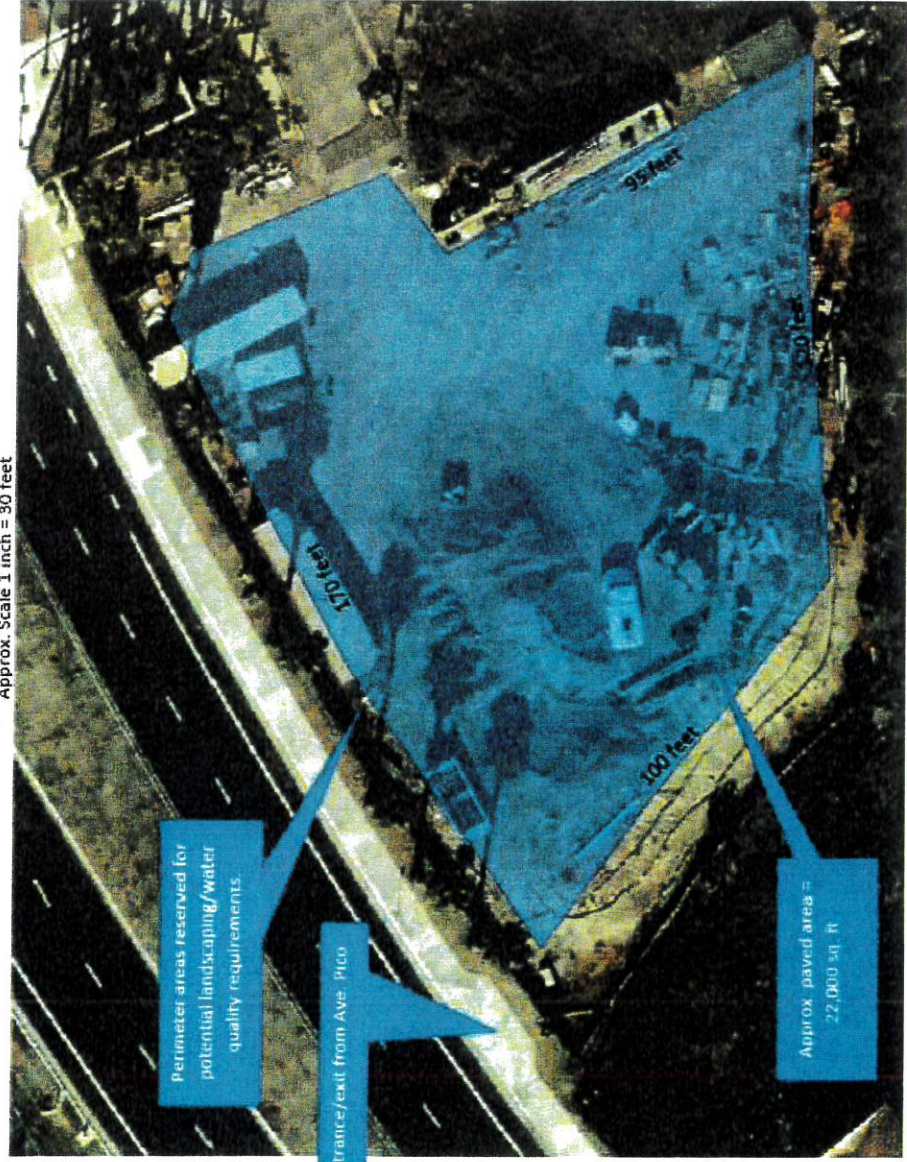
PROPRIETARY INFORMATION
 THE INFORMATION CONTAINED IN THIS STATE OF
 CALIFORNIA IS UNCLASSIFIED EXCEPT WHERE SHOWN
 OTHERWISE BY A NOTICE OF CLASSIFICATION

Verizon
 15505 SAND CANYON AVENUE, D1
 IRVINE, CA 92618

SC AMTRAK
 MONOPALM
 380 AVENIDA PICO
 SAN CLEMENTE, CALIFORNIA 92672

SHEET TITLE
 MISCELLANEOUS PLAN
A-0

City Lot next to Water Reclamation Plant
 Approx. Scale 1 inch = 30 feet



FOR INFORMATION ONLY (PROVIDED BY CITY OF SAN CLEMENTE)

NO.	DATE	DESCRIPTION	BY
1	10-18-18	ISSUED FOR PERMITS	ML
2	10-18-18	REVISED TO REFLECT PERMITS	ML
3	10-18-18	REVISED TO UNIFORMITY	ML
4	10-18-18	REVISED TO UNIFORMITY	ML
5	10-18-18	REVISED TO UNIFORMITY	ML
6	10-18-18	REVISED TO UNIFORMITY	ML
7	10-18-18	REVISED TO UNIFORMITY	ML
8	10-18-18	REVISED TO UNIFORMITY	ML
9	10-18-18	REVISED TO UNIFORMITY	ML
10	10-18-18	REVISED TO UNIFORMITY	ML

Jacobs
 Jacobs Engineering Group
 3000 Central Expressway
 Redwood City, CA 94063
 (650) 997-2000
 www.jacobs.com

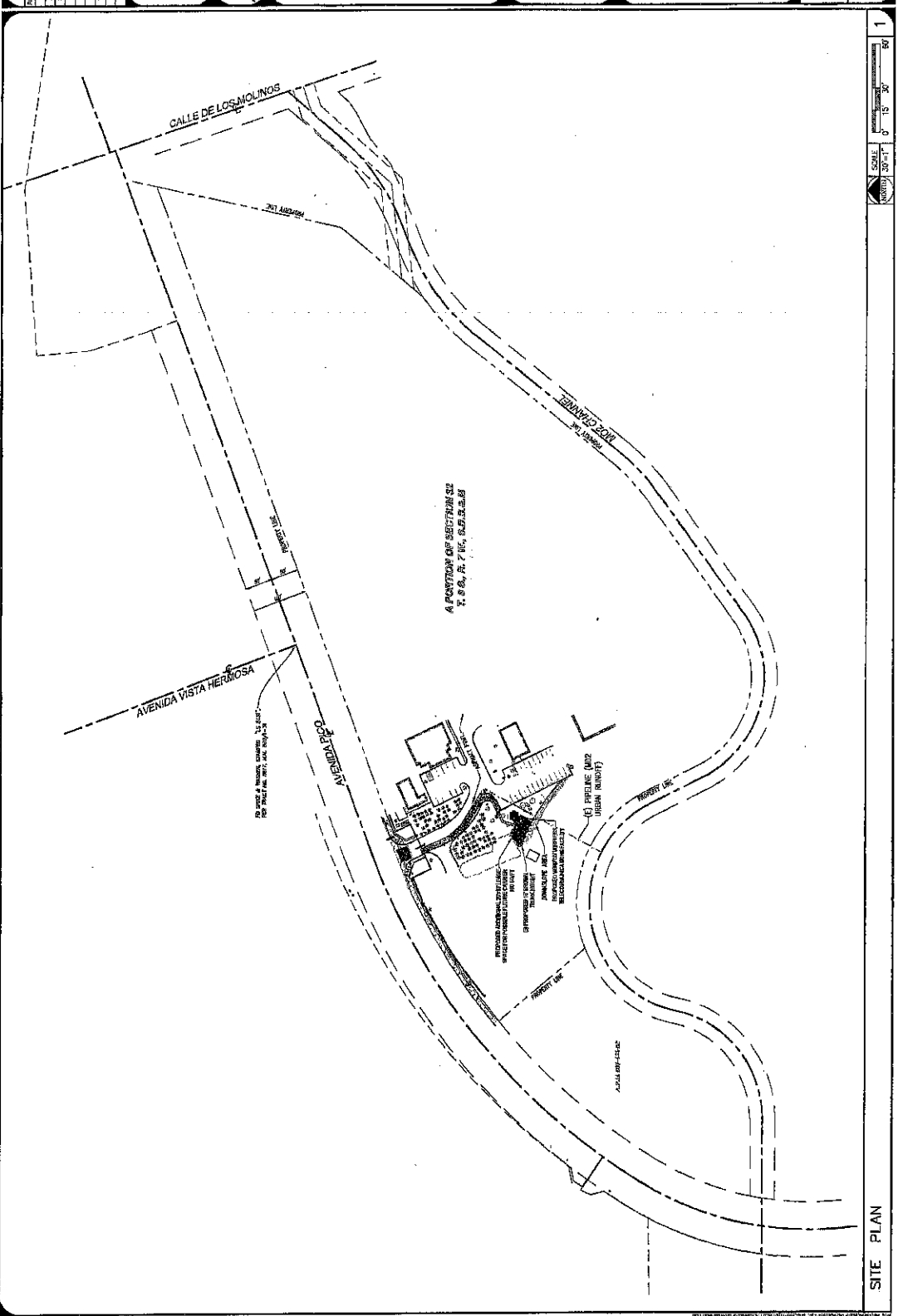
PROPRIETARY INFORMATION
 THIS DOCUMENT IS THE PROPERTY OF JACOBS ENGINEERING GROUP AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF JACOBS ENGINEERING GROUP.

Verizon
 1605 SAND CANYON AVENUE, D1
 IRVINE, CA 92618

SC AMTRAK
 MONOPALM
 380 AVENIDA PICO
 SAN CLEMENTE, CALIFORNIA 92672

SHEET TITLE:
 SITE PLAN

A-1



ISSUE STATUS	NO.	DATE	DESCRIPTION	BY
1	04-18	04/18/10	ISSUED FOR PERMITS	RU
2	04-18	04/18/10	ISSUED FOR PERMITS	RU
3	04-18	04/18/10	ISSUED FOR PERMITS	RU
4	04-18	04/18/10	ISSUED FOR PERMITS	RU
5	04-18	04/18/10	ISSUED FOR PERMITS	RU
6	04-18	04/18/10	ISSUED FOR PERMITS	RU
7	04-18	04/18/10	ISSUED FOR PERMITS	RU
8	04-18	04/18/10	ISSUED FOR PERMITS	RU
9	04-18	04/18/10	ISSUED FOR PERMITS	RU
10	04-18	04/18/10	ISSUED FOR PERMITS	RU

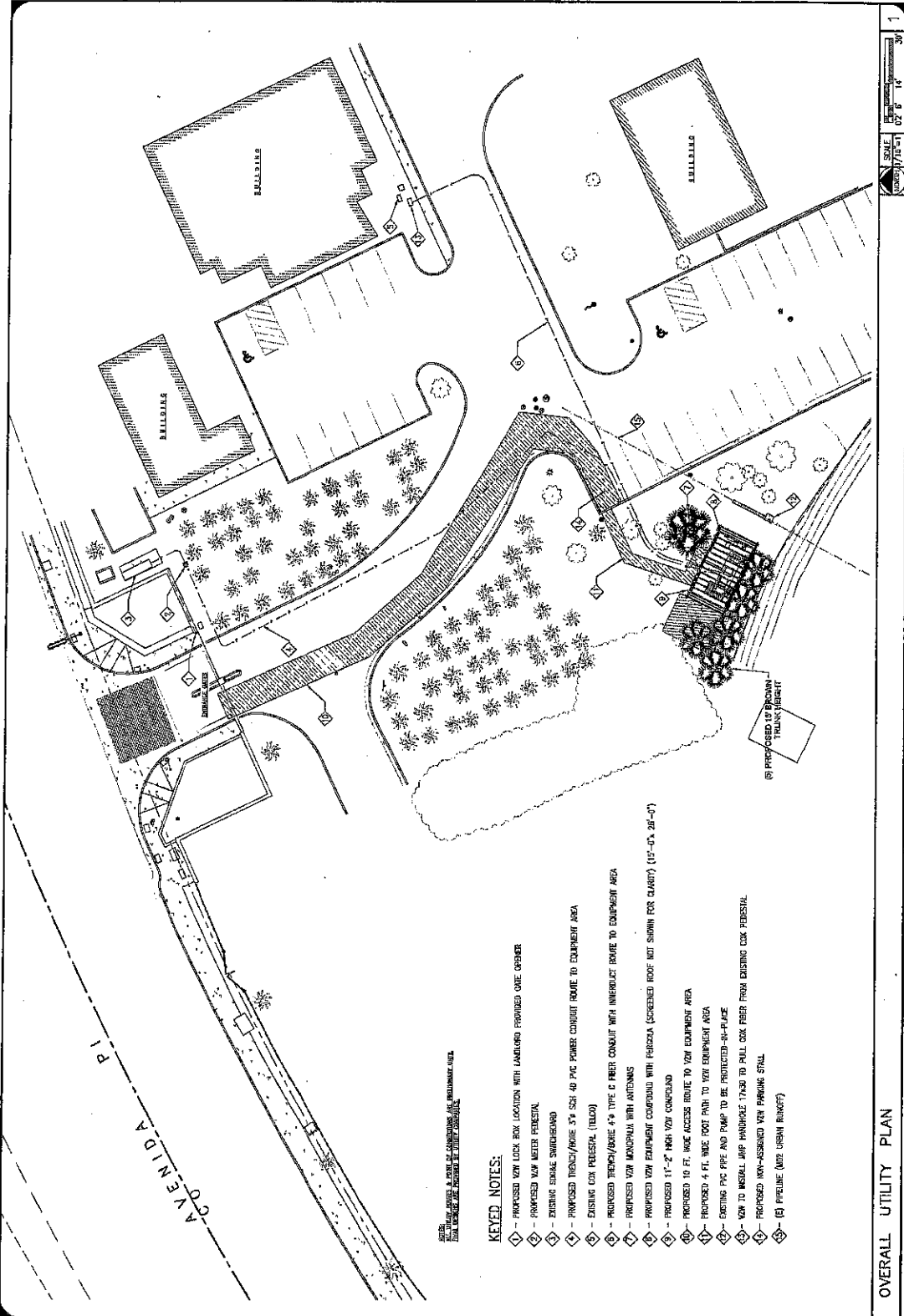
Jacobs
 Challenge Today.
 Reimagine Tomorrow.
 Jacobs Infrastructure Group, Inc.
 20000 Central Expressway, Suite 200
 Irvine, CA 92618
 (949) 451-7000

Verizon
 17805 SAND CANYON AVENUE, D1
 IRVINE, CA 92618

SC AMTRAK
 MONOPALM
 380 AVENIDA PICO
 SAN CLEMENTE, CALIFORNIA 92672

SHEET TITLE:
 ENLARGED SITE PLAN

A-2



- KEYED NOTES:**
- ① - PROPOSED VIM LOCK BOX LOCATION WITH JAMELORO PROVIDED ONE OFFSPER
 - ② - PROPOSED VIM WEIR PERISTAL
 - ③ - EXISTING SIGNAL SIGNPOST
 - ④ - PROPOSED TRENCH/WIRE 3" X 3" 40 PAC POWER CONDUIT ROUTE TO EQUIPMENT AREA
 - ⑤ - EXISTING COX PERISTAL (TELEO)
 - ⑥ - PROPOSED TRENCH/WIRE 4" X 4" TYPE L FIBER CONDUIT WITH INTERJECT ROUTE TO EQUIPMENT AREA
 - ⑦ - PROPOSED VIM MONOPALM WITH ANTENNAS
 - ⑧ - PROPOSED VIM EQUIPMENT COMPOUND WITH PERISTAL (CONCRETE ROOF NOT SHOWN FOR CLARITY) (10'-0" X 26'-0")
 - ⑨ - PROPOSED 11'-2" HIGH VIM CONCRETE
 - ⑩ - PROPOSED 10 FT. WIDE ACCESS ROUTE TO VIM EQUIPMENT AREA
 - ⑪ - PROPOSED 4 FT. WIDE FOOT PATH TO VIM EQUIPMENT AREA
 - ⑫ - EXISTING PAC PIPE AND PUMP TO BE PROTECTED-IN-PLACE
 - ⑬ - VIM TO INSTALL JIP HANGOFF 12x30 TO PULL COX FIBER FROM EXISTING COX PERISTAL
 - ⑭ - PROPOSED NON-ASSIGNED VIM PARKING STALL
 - ⑮ - (B) PPELINE (WIDE DRIVE RAMP)