

STAFF REPORT



ITEM NO. 12
CITY OF OCEANSIDE

DATE: August 12, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department
Property Management Division

SUBJECT: **AMENDMENT 1 TO PROPERTY USE AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND SPRINT PCS ASSETS, LLC, FOR A TELECOMMUNICATIONS FACILITY.**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Property Use Agreement with Sprint PCS Assets, LLC, for non-exclusive use of a portion of Martin Luther King Park at 4500 Mesa Drive for a telecommunications facility, extending the term of the agreement from September 1, 2008, to August 31, 2013, with minimum revenue to the City in the amount of \$189,000, and authorize the City Manager to execute the agreement.

BACKGROUND

Sprint PCS Assets, LLC (Sprint), originally entered into a Property Use Agreement (Agreement) with the City of Oceanside on August 6, 2003 for non-exclusive use of a portion of Martin Luther King Park at 4500 Mesa Drive ("Premises") for a telecommunications facility. The original term expired on September 1, 2008, and Sprint since that time has been leasing the property on a month-to-month basis. Sprint has requested to exercise its option to extend the Agreement with the City an additional five years to expire August 31, 2013.

ANALYSIS

The proposed amendment extends the term of the Agreement an additional five years for the continued use of the Premises by Sprint as a telecommunication facility; the City does not anticipate needing the Premises through the extended term of the Agreement. The continued use of the Premises by Sprint PCS Assets, LLC, will provide additional revenue to the City. The City has the authority to manage City-owned property and to require fair and reasonable compensation from telecommunications providers on a competitively neutral and nondiscriminatory basis.

FISCAL IMPACT

The Amendment requires an annual payment of \$37,800 retroactive to September 1, 2008, payable in installments of \$3,150 a month. Thereafter, said rent is subject to

adjustment based on annual increases, if any, in the Consumer Price Index ("CPI") during the five-year extension period. It is anticipated that the five-year extension of the term of the Agreement through August 31, 2013, assuming no CPI increases, would generate a minimum of \$189,000. However, this amount could be higher depending on the increase in CPI over the said five-year period. Revenues generated by telecommunication and cellular sites on City-owned property throughout the City accrue to the City's General Fund 1011.4351.0006.

COMMISSION OR COMMITTEE REPORT

Does not apply.

INSURANCE REQUIREMENTS

Sprint will be required to maintain the City's standard insurance requirements over the term of the Agreement.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

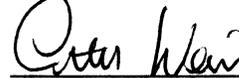
Staff recommends that the City Council approve Amendment 1 to the Property Use Agreement with Sprint PCS Assets, LLC, for non-exclusive use of a portion of Martin Luther King Park at 4500 Mesa Drive for a telecommunications facility, extending the term of the agreement from September 1, 2008, to August 31, 2013, with minimum revenue to the City in the amount of \$189,000, and authorize the City Manager to execute the agreement.

PREPARED BY:



Rosa A. Jones
Program Specialist

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

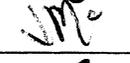
Michelle Skaggs-Lawrence, Deputy City Manager

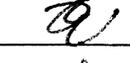
Jane McVey, Economic and Community Development Director

Douglas E. Eddow, Real Property Manager

Teri Ferro, Financial Service Director









FIRST AMENDMENT TO PROPERTY USE AGREEMENT

This First Amendment to Property Use Agreement (“Amendment”) dated July 8, 2009, is entered into by and between the City of Oceanside, a municipal corporation (“CITY”) and Sprint PCS Assets, L.L.C. (“PERMITTEE”).

RECITALS

WHEREAS, the CITY and PERMITTEE entered into that certain Property Use Agreement, dated as of August 6, 2003 (“Agreement”), for property known as Martin Luther King Park herein after referred to as “premises.”

WHEREAS, the original term of the Agreement expired August 31, 2008, and PERMITTEE has been occupying the PREMISES on a month to month basis thereafter; and

WHEREAS, the Agreement gives PERMITTEE the option to extend the term of the Agreement for three additional five (5) year terms; and

WHEREAS, PERMITTEE has provided notice to the CITY that it is exercising its option to extend the term of the Agreement and the CITY and PERMITTEE are desirous of amending the Agreement to extend the term thereof.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

1. Subsection 2.01 **Commencement** shall be deleted in its entirety and replaced with the following language:

2.01 Term. The term of the Agreement as amended shall be for five (5) years, commencing retroactive to September 1, 2008 and expiring on August 31, 2013.

2. Subsection 2.02 **Renewal Option** shall be amended to reflect that PERMITTEE may request an extension of the term of this Agreement for two (2) additional terms of five (5) years each. All other terms of said Subsection 2.02 shall remain the same.

3. Subsection 3.02 **Initial Property Use Payment** shall be deleted in its entirety and replaced with the following language:

3.02 Property Use Payment. The minimum annual Property Use Payment beginning September 1, 2008 shall be Thirty Seven Thousand Eight Hundred Dollars (\$37,800.00), payable monthly in advance at the rate of Three Thousand One Hundred Fifty Dollars (\$3,150.00) on or before the first (1st) day of each new month. For the convenience of the Agreement, the Property Use Payment may be referred to as “Rent”.

4. Subjection 3.03 **Minimum Property Use Payment Adjustment Date** Shall be amended to delete the first paragraph and be replaced with the following:

“3.03 Minimum Property Use Payment Adjustment Date. The minimum property use adjustment date shall be the first (1st) day of January, beginning January 2010 and annually thereafter during the term of the agreement. The minimum annual property use payment amount shall be adjusted on each property use payment adjustment date as set forth below.” All other terms of said Subsection 3.03 shall remain the same.

5. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto agree to all of the covenants and conditions as set forth herein as of the date first written above.

“CITY”

City of Oceanside,
a municipal corporation

Approved as to form:

By: _____
City Manager

By: *Debra Hamilton, ASST.*
City Attorney

“PERMITTEE”

Sprint PCS, Assets, L.L.C.

By: *Deborah S. Howard* 7/8/09
DEBORAH S. HOWARD
Its: MANAGER, PROPERTY SERVICES

By: *Kathryn Crompton* 7/13/09
Kathryn Crompton
Its: Manager of Site Development

NOTARY ACKNOWLEDGEMENT OF PERMITTEE’S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of LOS ANGELES

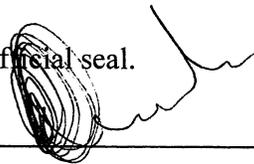
On 07/08/2009 before me, RAJ MANCHANDA (NOTARY PUBLIC),
(Here insert name and title of the officer)

personally appeared DEBORAH HOWARD;

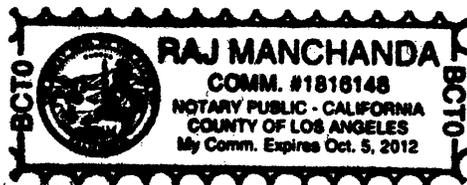
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on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

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

WITNESS my hand and official seal.



Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

 (Title)
 Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

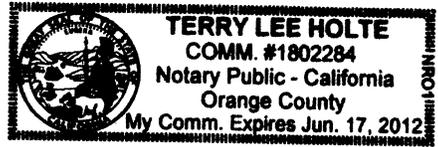
State of California

County of Orange } ss.

On 7/13/09, before me, Terry Holte, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared Kathryn Crompton
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.
Terry Lee Holte
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

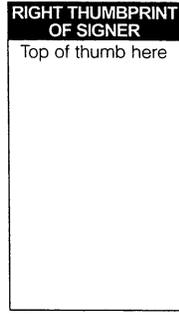
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: _____



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May 27 2003

Subject: 1A Certification

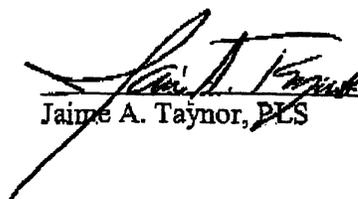
Re: MARTIN LUTHER KING PARK
4500 MESA DRIVE
OCEANSIDE, CALIFORNIA 92054
SAN DIEGO COUNTY

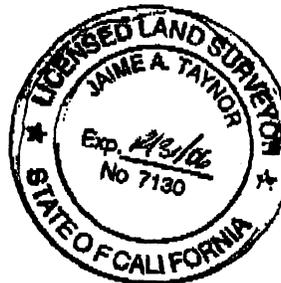
Sprint PCS Site No. SD54XC172-D

I hereby certify that the Latitude of 33° 12' 59.08" North and the Longitude of 117°18' 23.99" West are accurate to within +/- 15 feet horizontally; and the site ground elevation of 231.8 Mean Sea Level (MSL) is accurate to within 3 feet vertically which meets or exceeds the requirements set forth in FAA order 8260.19c for 1-A accuracy.

The horizontal datum (coordinates) are in terms of the North American Datum of 1983 (NAD-83) and are expressed in degrees, minutes and seconds to the nearest hundredth of a second. The vertical datum, (height) are in terms of the North American Vertical Datum of 1988 and are in determined to the nearest tenth of a foot. Both horizontal and vertical data were compiled from GPS observations acquired at the project site and from the Continuously Operating Receiver Station (CORS) Torrance Airport. CORS horizontal and vertical data established by the United States Department of Commerce, Department of National Oceanic and Atmospheric Administration, National Geodetic Survey.

State of California
Professional Land Surveyor License No. L7130


Jaime A. Taynor, PLS
Date 06/05/03



**PROPERTY USE AGREEMENT
WITH SPRINT PCS ASSETS, L.L.C.,
FOR USE OF CITY OWNED PROPERTY AT
MARTIN LUTHER KING PARK**

Document No. 03-D481-1
8/6/03 (24)

This Property Use Agreement, hereinafter called ("Agreement") is entered into this 6th day of August, 2003, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called ("City") and Sprint PCS Assets, L.L.C., hereinafter referred to as ("Permittee"). The effective date shall be the date this Agreement is approved by the Oceanside City Council, as evidenced by the date indicated hereinabove (the "Effective Date").

RECITALS

WHEREAS, City is owner of the real property described hereinbelow; and

WHEREAS, Permittee is licensed by the Federal Communications Commission (the "FCC") to provide wireless communication services; and

WHEREAS, Permittee represents that it is not a public utility as defined in the California Public Utilities Code, but is the holder of a Wireless Registration Identification Number U-30640-C issued by the California Public Utilities Commission of the State of California ("CPUC");

WHEREAS, Permittee's use of said real property in accordance with the terms, covenants, conditions and provisions contained hereinbelow will benefit the general population of the City.

AGREEMENT

NOW THEREFORE, the parties hereto mutually agree as follows:

SECTION 1: USES

1.01 Premises. City hereby authorizes Permittee, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of a portion of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as **Martin Luther King Park**, as more particularly described and illustrated in **Exhibit "A"**, attached hereto and by this reference made part of this Agreement. Said real property is hereinafter called the "**Premises**". In return for this permission, Permittee hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

City further grants to Permittee the non-exclusive right for ingress and egress, seven days a week, twenty-four hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits, and pipes over, under or along a ten-foot travel way extending from the nearest public right-of-way to the Premises.

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WITH SPRINT PCS ASSETS, L.L.C.,
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MARTIN LUTHER KING PARK**

Notwithstanding anything to the contrary contained in this Agreement, Permittee's use of Permittee's Facilities, as defined in Section 1.02(a) below, shall be exclusive.

1.02 Uses. It is expressly agreed that the Premises shall be used by Permittee solely and exclusively for the purpose of a **wireless communication site**, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. Permittee covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that Permittee uses the Premises for purposes not expressly authorized herein, the Permittee shall be deemed in default under this Agreement.

Upon approval of a Conditional Use Permit, Permittee has the right to erect, maintain and operate on the Premises, radio communications facilities, antenna towers or poles, utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas, supporting equipment and structures thereto, more fully described and illustrated in drawings on file in the Planning Department of the City, and hereinafter referred to as "**Permittee's Facilities**".

In connection therewith, Permittee has the right to do all work necessary to prepare, maintain and alter the Premises for Permittee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Permittee's construction and installation work shall be performed at Permittee's sole cost and expense and in a good and workmanlike manner. Title to the Permittee Facilities shall be held by Permittee. All of Permittee Facilities shall remain Permittee's personal property and are not fixtures. Permittee shall remove all Permittee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided Permittee repairs any damage to the Premises caused by such removal. Upon termination of this Agreement, Permittee shall be required to remove all foundations placed or constructed on the Premises by Permittee.

1.03 Abandonment by Permittee. Even though Permittee has breached the Agreement and abandoned the Premises, this Agreement may at City's discretion continue in effect for so long as City does not terminate this Agreement, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the property use payment as it becomes due, plus damages, costs and fees.

SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for a period of five years commencing on the 1st day of the month following the Effective Date of this Agreement.

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2.02 Renewal Option. The Permittee may request an request extension of the term of this Agreement for **three (3)** additional terms of **five (5) years** each under the terms and conditions of this Agreement at the City's calculated fair market property use payment rate of similar businesses and or services, provided that the Permittee is not in default of this Agreement. Any extension must be approved by the City Council.

The Permittee may request extensions of the term of this Agreement provided that written notice from the Permittee is received by the City Manager no later than **180 days** prior to the expiration of the term of this Agreement. The option to extend is not automatic and will be decided by the City. The City Manager shall provide written notification to the Permittee within **60 days** of receipt of the Permittee's request, of the City's intent to grant or deny the renewal request. No later than **30 days** from the City's notification to Permittee of the City's intent to extend the term of this Agreement, the City Manager shall in writing provide Permittee with the City's calculated fair market property use payment value at which the City is willing to accept for the Premises. No later than **30 days** after the City Manager provides Permittee with the City's determination of its acceptable property use payment rate Permittee shall provide City with its determination of acceptance or rejection of the recalculated property use payment rate. In no event shall the property use payment rate be less than that required during the proceeding annual term. Failure to accept the City's recalculated property use rate shall result in termination at the expiration of the lease term.

2.03 Business License. Permittee agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for Permittee's operations under this Agreement.

SECTION 3: PROPERTY USE PAYMENT

3.01 Time and Place of Payment. The Permittee shall make all payments **monthly** in advance on or before **the first day of each month**. Checks shall be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6.1 of this Agreement. City may change the place and time of payment at any time upon thirty (30) day's written notice to Permittee. Permittee assumes all risk of loss and responsibility for late payment charges.

3.02 Initial Property Use Payment. The minimum annual property use payment for the **first (1st) year** of this Agreement shall be **Thirty Thousand Dollars (\$30,000)** which shall be payable monthly in advance at the rate of **Twenty-Five Hundred Dollars (\$2,500)** on or before the **first (1st) day** of each new month. For the convenience of this Agreement, Property Use Payment may be referred to as "Rent".

**PROPERTY USE AGREEMENT
WITH SPRINT PCS ASSETS, L.L.C.,
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MARTIN LUTHER KING PARK**

3.03 Minimum Property Use Payment Adjustment Date. The minimum property use adjustment date shall be the **first (1st) day of January** of each year following the first anniversary of the Commencement Date (as defined in section 2.01) of this Agreement. The minimum annual property use payment amount, and the corresponding prorated monthly payments shall be adjusted on each property use payment adjustment date as set forth below.

a. Adjustment Index. The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by the City. Any reference in this agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.03a.

Regardless of the index publication dates, the minimum property use payment adjustment dates shall be on the dates defined by Subsection 3.03 above. Until the minimum property use payment adjustment can be actually calculated in accordance with this Agreement, Permittee shall continue to make payments at the existing property use payment rate. When the adjustment is calculated, the balance of property use payments due at the adjusted rate, from the property use payment adjustment date through the date of calculation, will be paid to City within **30 days** of written notice by the City. In no event shall the adjusted property use payment, as established by the CPI, be less than the property use payment in existence immediately prior to the adjustment date.

b. Minimum Property Use Payment Adjustment Computation. The annual minimum property use payment adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

Initial Minimum Annual Property Use Payment: The minimum annual property use payment at the Commencement Date of this Agreement as listed in Subsection 3.02 above.

Existing Minimum Annual Property Use Payment: The existing minimum annual property use payment shall be the minimum annual property use payment amount in effect on the date preceding the property use payment adjustment date.

Percent change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12-month** period covered by the most recent publication of the Index.

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Property Use Payment Adjustment Formulas:

First Adjustment: Initial minimum annual property use payment + (Initial minimum annual property use payment x the percent change in the CPI's) = New minimum annual property use payment.

For example: $\$30,000 + (\$30,000 \times 5\%) = \$31,500$

Subsequent Adjustments: Existing minimum annual property use payment + (Initial minimum annual property use payment x the percent change in the CPI) = New minimum annual property use payment.

For example: $\$31,500 + (\$30,000 \times 6\%) = \$33,300$

However, in no event shall the adjusted property use payment increase be less than **five percent (5%)** or more than **nine percent (9%)** per year.

3.04 Delinquent Payment. If Permittee fails to pay the payment when due, Permittee shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen (15) days, Permittee shall pay an additional five percent (5%) {being a total of ten percent (10%)} which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Permittee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of or related to the conduct of the Permittee or its employees, agents or others in connection with or related to its use and occupation of the Premises under this Agreement, except those claims arising from the sole negligence or sole willful conduct of the City, its officers, agents, or employees. Permittee's indemnification shall include any and all costs, expenses, attorney's fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Permittee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Permittee shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

- a. Permittee shall maintain the following minimum limits:

**PROPERTY USE AGREEMENT
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General Liability

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

b. All insurance companies affording coverage to the Permittee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the Permittee shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **30 days** written notice to the City of Oceanside should the policy be canceled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Permittee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

f. Permittee shall provide a substitute certificate of insurance no later than **30 days** prior to the policy expiration date. Failure by the Permittee to provide such a substitution and extend the policy expiration date shall be considered a default by Permittee and may subject the Permittee to a termination of this Agreement.

g. Maintenance of insurance by the Permittee as specified in this Agreement shall in no way be interpreted as relieving the Permittee of any responsibility whatever and the Permittee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Permittee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Permittee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within 30 days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Permittee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Permittee to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

**PROPERTY USE AGREEMENT
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MARTIN LUTHER KING PARK**

i. City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving Permittee **60 days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Permittee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

4.03 Accident Reports. Permittee shall, within **72 hours** after occurrence, report to City any accident causing property damage or any injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 5: GENERAL PROVISIONS

5.01 Maintenance. With respect to Permittee's operations at or on the Premises, Permittee shall make all repairs and replacements necessary to maintain and preserve the Premises and the Permittee Facilities in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws.

In the event that the Premises and/or the Permittee Facilities are not in a decent, safe, healthy, and sanitary condition, City shall have the right, upon written notice to Permittee, to have any necessary maintenance work done at the expense of Permittee, and Permittee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises and/or the Permittee Facilities in a decent, safe, healthy, and sanitary condition. Permittee shall make payment no later than **thirty (30) days** after written notice from the City. Further, if at any time City determines that said Premises and/or the Permittee Facilities are not in a decent, safe, healthy, and sanitary condition, City may at its sole option, upon written notice, require Permittee to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of City to correct the said unsatisfactory condition. Permittee shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City.

5.02 Utilities. Permittee agrees to order, obtain, and pay for all utilities, services, and installation charges in connection with the development, occupation and operation of the Premises and the Permittee Facilities.

5.03 Signs. Permittee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of City. If any such unauthorized item is found on the Premises, Permittee shall remove the item at its expense with **24 hours** of written notice thereof by City, or City may thereupon remove the item at Permittee's cost.

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FOR USE OF CITY OWNED PROPERTY AT
MARTIN LUTHER KING PARK**

5.04 Taxes. Permittee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Permittee or the Premises, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Permittee or levied by reason of the business or other Permittee activities related to the Premises, including any licenses or permits.

Permittee recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Permittee may be subject to the payment of taxes levied on such interest, and that Permittee shall pay all such possessory interest taxes.

5.05 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

Property Management
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

To Permittee:

Sprint PCS Assets, L.L.C.
2650 Camino Del Rio North, Suite 100
San Diego, CA 92108

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

5.06 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s).

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5.07 Entire Agreement. This Agreement comprises the entire integrated understanding between City and Permittee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of this Agreement itself.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City.

The Permittee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5.08 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

5.09 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Permittee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

Permittee may assign this Agreement only to an entity that is licensed by the FCC to provide wireless communication services upon written consent by City to Permittee, for the same use as herein described in Section 1.02, subject to the assignee obtaining all necessary licenses and permits for any use not consistent with the then existing current use of the Premises, subject further to the assignee assuming all of the Permittee's obligations herein. Upon assignment Permittee shall be relieved of all-future performance, liabilities, and obligations under this Agreement. Permittee shall not have the right to sublet this Agreement without City's consent.

This Agreement shall run with the property and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, heirs and assigns. Notwithstanding anything to the contrary contained in this Agreement, Permittee may assign, mortgage, pledge, hypothecate or otherwise transfer its interest in this

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Agreement to any financing entity, or agent on behalf of any financing entity to whom Permittee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof, provided that such assignee has delivered to City its written agreement to be bound by all the provisions of this Agreement, in the event that such assignee accedes to Permittee's rights hereunder by foreclosure or other legal process, and determines, in its sole discretion, to continue operating the Permittee Facilities.

5.10 Defaults and Termination. This Agreement may be terminated without further liability on **thirty (30) days** prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within **thirty (30) days** of receipt of written notice of default, provided that the grace period for any monetary default is **ten (10) days** from receipt of notice; or (ii) by either party for any reason or for no reason, provided either party delivers written notice of early termination no later than **thirty (30) days** prior to the Commencement Date of this agreement; or (iii) by Permittee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Permittee Facilities; or (iv) by Permittee if Permittee is unable to occupy and utilize the Premises due to an action of the FCC including without limitation, a take back of spectrum or change in frequencies.

City may also terminate this Agreement upon written notice to Permittee in the event that:

a. Permittee has previously been notified by City of Permittee's default under this Agreement and Permittee, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

b. Permittee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

c. Permittee shall be adjudicated a bankruptcy, or

d. Permittee shall make a general assignment for the benefit of creditors.

Upon termination, City may immediately enter and take possession of the Premises.

5.11 Other Regulations. All use of the Premises under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

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5.12 Future Rules and Orders. The Permittee, or any successor or authorized assign, shall abide by any agreements, rules, regulations, orders, or directives governing the use of the Premises as the City may find necessary or appropriate in the exercise of its police powers.

SECTION 6: SPECIAL PROVISIONS

6.01 Related Council Action. By the granting of this agreement, neither City nor the Council of the City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

6.02 Use of the Premises. Permittee acknowledges that the paramount use of Premises is for public services. Permittee agrees to coordinate use of the Premises with City so as not to conflict with City's programs and activities.

6.03 Ancillary Uses and Services. No additional uses or services, other than those provided for under Section 1.02 of this Agreement, shall be provided by Permittee from or at the demised Premises.

6.04 Standards of Operation. Permittee agrees that it shall operate and manage Permittee's Facilities upon or from the Premises in a first class manner and comparable to other similar facilities with the San Diego County and Southern California areas.

6.05 Permittee's Employees. Permittee shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by Permittee on the Premises. Permittee shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City, provided that such rules, regulations and requirements are not in conflict with the terms of this Agreement. Permittee shall maintain a staff in adequate size and number to effectively operate, maintain, and administer all of the Permittee Facilities located on the Premises.

6.06 Hazardous Substances. Permittee agrees that it will not use, generate, store or dispose of any Hazardous Material, as defined below, on, under, about or within the Premises in violation of any law or regulation. City represents, warrants and agrees (i) that neither City nor, to City's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Premises in violation of any law or regulation, and (ii) that City will not, and will not permit any third party to use, generate, store or dispose

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of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Permittee agrees to defend, indemnify and hold harmless the City and its officials, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Premises is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic, dangerous or explosive in any applicable federal, state or local law or regulation. The provisions of this paragraph shall survive the termination of this Agreement.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other Premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Permittee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning is expressly prohibited without prior written consent of the City.

6.07 Continued Occupancy. Permittee covenants and agrees to, and it is the intent of this Agreement that the Permittee shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the Premises for the purposes hereinabove specified, except while Premises are not usable by Permittee by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Permittee.

6.08 Waiver of City's Lien.

a. Notwithstanding the provisions of Section 1.01 of this Agreement, City waives any lien rights it may have concerning the Permittee Facilities which are deemed Permittee's personal property and not fixtures, and Permittee has the right to remove the same at any time without City's consent.

b. City acknowledges that Permittee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Permittee Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, City (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any

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Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

6.09 Warranty of Title and Quiet Enjoyment. City warrants that: (i) City owns the Premises in fee simple and has rights of access thereto and the Premises is free and clear of all liens, encumbrances and restrictions; (ii) City has full right to make and perform this Agreement; and (iii) City covenants and agrees with Permittee that upon Permittee paying the Rent and observing and performing all the terms, covenants and conditions on Permittee's part to be observed and performed, Permittee may peacefully and quietly enjoy the Premises. City agrees to indemnify and hold harmless Permittee from any and all claims on the interest held in the Premises by Permittee under this Agreement.

6.10 Tests and Construction. Permittee shall have the right at any time following the full execution of this Agreement to enter upon the Premises for the purpose of: making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests in preparation of constructing the Permittee Facilities (as defined in Paragraph 1.02(a) above). Prior to the actual construction or installation of the Permittee Facilities at the Premises, Permittee shall have first received all approvals required by local, state and federal ordinances, regulations, rules or laws for Permittee's use and occupation of the Premises.

6.11 Interference.

(a) Permittee acknowledges that the Premises is within a public park and warrants that it shall operate Permittee's Facilities in a manner that will not cause interference to City and other permittees, licensees, and users of the City property which the Premises is a part of, provided that City and other users installations predate that of the Permittee Facilities. All operations by Permittee shall be in compliance with all FCC requirements.

(b) Subsequent to the installation of the Permittee Facilities and prior to City authorizing the installation of any new equipment on the City property, which the Premises is a part of or property contiguous thereto owned or controlled by City, the City shall require that an intermodulation study be conducted by an FCC licensed Radio Frequency Engineer to verify that the new equipment will not cause interference with Permittee's equipment. In the event that Permittee's equipment experiences interference after the installation of said new equipment, Permittee shall notify the operator of the equipment causing said interference and request that it take all reasonable steps necessary to eliminate such interference. In no event shall Permittee call upon City to remedy any interference to Permittee's equipment, unless the interference is caused by equipment owned and operated by City.

6.12 Dispute Resolution. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County. The parties agree that before either party

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commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

SECTION 7: SIGNATURES

7.01 Signature Page. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Permittee and the City.

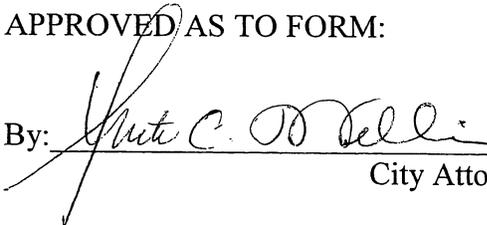
IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

City
CITY OF OCEANSIDE

Date: 8-8-03

By: 
City Manager

APPROVED AS TO FORM:

By: 
City Attorney

Permittee

SPRINT PCS ASSETS, L.L.C.

Date: 6-10-03

By: 
Karen Mitchell-Johns
Site Development Manager

Date: _____

By: _____

NOTARY ACKNOWLEDGEMENTS OF PERMITTEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

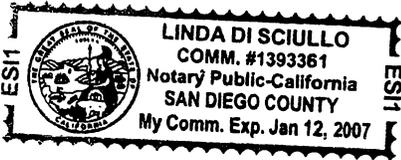
State of California

County of San Diego

On June 10, 2003 before me, Linda Di Sciuolo
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Karen Mitchell Johns
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Linda Di Sciuolo
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: City of Oceanside License Agreement SD-54-172

Document Date: 6-10-2003 Number of Pages: 15

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Karen Mitchell Johns

- Individual
- Corporate Officer
- Title(s): Site Development Mgr
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:

RIGHT THUMBPRINT OF SIGNER
Top of Thumb here

Signer Is Representing:

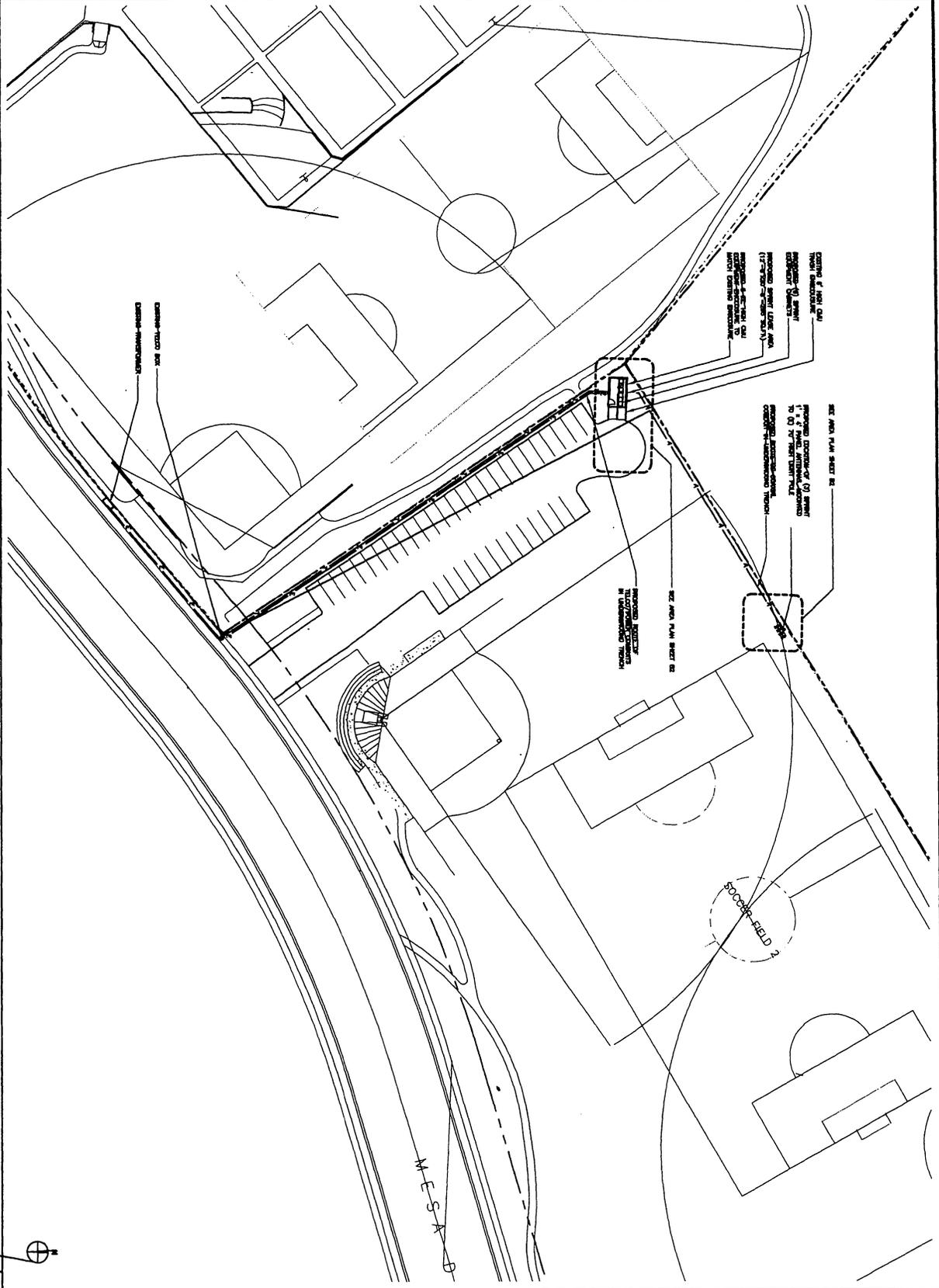
Signer's Name: _____

- Individual
- Corporate Officer
- Title(s):
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:

RIGHT THUMBPRINT OF SIGNER
Top of Thumb here

Signer Is Representing:

SIDE PLAN



SCALE 1/8" = 1'-0"

ISSUE DATES				
NO.	DATE	BY	REVISION	APPROVED
1				
2				
3				
4				

REVISIONS				
NO.	DATE	BY	REVISION	APPROVED
1				
2				
3				
4				

00000172
MLKING PARK
 300 MELBROOK
 OAKLAND, CA
EXHIBIT
SITEPLAN

APPLICANT

 Sprint PCS

ARCHITECT

Di Donato Associates
 1100 FIRST AVENUE - SUITE 100
 SAN DIEGO, CA 92101
 TEL: 619.594.4100 FAX: 619.594.0200
 www.di-donato.com

ENGINEER/CONSULTANT

HIRSCH & COMPANY

CONSULTING ENGINEERS • Since 1965 • Planning • Civil Engineering • Surveying • Environmental

May 27 2003

Subject: 1A Certification

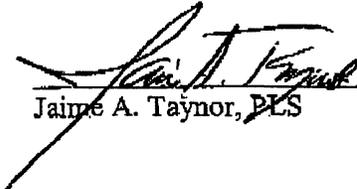
Re: MARTIN LUTHER KING PARK
4500 MESA DRIVE
OCEANSIDE, CALIFORNIA 92054
SAN DIEGO COUNTY

Sprint PCS Site No. SD54XC172-D

I hereby certify that the Latitude of 33° 12' 59.08" North and the Longitude of 117°18' 23.99" West are accurate to within +/- 15 feet horizontally; and the site ground elevation of 231.8 Mean Sea Level (MSL) is accurate to within 3 feet vertically which meets or exceeds the requirements set forth in FAA order 8260.19c for 1-A accuracy.

The horizontal datum (coordinates) are in terms of the North American Datum of 1983 (NAD-83) and are expressed in degrees, minutes and seconds to the nearest hundredth of a second. The vertical datum, (height) are in terms of the North American Vertical Datum of 1988 and are in determined to the nearest tenth of a foot. Both horizontal and vertical data were compiled from GPS observations acquired at the project site and from the Continuously Operating Receiver Station (CORS) Torrance Airport. CORS horizontal and vertical data established by the United States Department of Commerce, Department of National Oceanic and Atmospheric Administration, National Geodetic Survey.

State of California
Professional Land Surveyor License No. L7130


Jaime A. Taynor, PLS
Date 06/03/03

