

STAFF REPORT



CITY OF OCEANSIDE

DATE: March 28, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department  
Property Management Division

SUBJECT: **PROPERTY USE AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND VERIZON WIRELESS (VAW), LLC, FOR THE USE OF CITY-OWNED PROPERTY FOR WIRELESS TELECOMMUNICATION PURPOSES**

**SYNOPSIS**

Staff recommends that the City Council approve a Property Use Agreement with Verizon Wireless (VAW), LLC, doing business as Verizon Wireless to use a portion of City-owned real property at 3471 Cannon Road for telecommunications purposes, for a total revenue of \$360,183.21 for a ten-year period plus a one-time payment of \$25,000; approve a budget appropriation of the \$25,000 to the Information Systems operating account; and authorize the City Manager to execute the agreement.

**BACKGROUND**

Verizon Wireless (VAW), LLC, doing business as Verizon Wireless ("Verizon") is one of the major providers of wireless cellular telecommunication services in the United States. Due to the increased demand for wireless cellular telecommunication services Verizon is looking to increase its wireless cellular telecommunication capabilities to its customers nationally, statewide and regionally.

Verizon approached the City of Oceanside ("City") about using a portion of the real property situated at 3471 Cannon Road in the City of Oceanside ("Property") to construct and operate a wireless cellular telecommunications facility. Due to the Property's elevation within the City, Verizon determined that the Property was an ideal location for its wireless cellular telecommunication facilities to provide better service in the region, including Verizon's customers in the City.

The Property is currently being utilized by the Water Utilities Department as their San Francisco Peak Reservoir facility and related appurtenances. Additionally, the Property is also currently leased to another telecommunication services provider, Sprint/Nextel, as well being used by the City's Information Technology Division ("IT").

## **ANALYSIS**

The term of the Property Use Agreement ("Agreement") with Verizon is for a period of ten years with the option for two additional terms of five years each. The City's Water Utilities Department does not anticipate using the entire Property at this time. However, there are plans for future expansion of the water infrastructure facilities in the future. Accordingly, the Agreement also provides for the relocation of Verizon's facilities after five years to another location at the Property in the event the City needs to expand its water utilities infrastructure to include the portion of the Property being used by Verizon.

In addition to providing better wireless cellular telecommunication services to Verizon customers living in the City, the Agreement would also bring much-needed annual revenue to the City's General Fund. As an added benefit, under the terms of the Agreement, Verizon would also contribute a one-time payment to help defray the cost to obtain a licensed radio frequency for the equipment at the Property that is currently being operated by IT. The licensed frequency would significantly reduce potential radio frequency and/or other interference with the City's IT equipment.

Notwithstanding approval of the Agreement, the design and construction of Verizon's telecommunication facilities at the Property will also be subject to prior approval of the Water Utilities Department and requires approval through the City's Development Services Department regulatory process.

## **FISCAL IMPACT**

The Agreement requires an annual rent payment of \$30,000, payable in equal monthly installments subject to a fixed annual increase of four percent during the initial ten-year term. The annual increase of four percent will also apply to the two five-year extension periods. For the initial ten-year term the revenue to the City is \$360,183.21. The rent payments under the Agreement will be deposited into General Fund Telecom Account No. 1101.4351.0006.

Per the Agreement Verizon will also be required to pay a one-time additional consideration in the amount of \$25,000. This additional consideration is Verizon's contribution to help defray the cost incurred by IT to obtain a licensed radio frequency. The additional consideration will be deposited into Information Systems Account No. 155010841.4501 and appropriated to the Information Systems Account No. 155010841.5704.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**INSURANCE REQUIREMENTS**

Verizon 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**

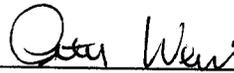
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PREPARED BY:



\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:



\_\_\_\_\_  
Peter A. Weiss  
City Manager

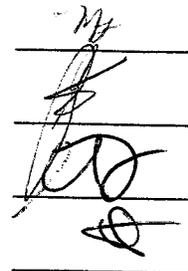
REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

George Buell, Development Services Department Director

Cari Dale, Water Utilities Department Director

Teri Ferro, Financial Services Department Director



# PROPERTY USE AGREEMENT

WITH

Verizon Wireless (VAW) LLC, dba Verizon Wireless

FOR USE OF CITY PROPERTY

AT

3471 Cannon Road, Oceanside, California

This Property Use Agreement, hereinafter called ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called ("City") and Verizon Wireless (VAW) LLC, dba Verizon Wireless 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 herein below;

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

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-3029-C issued by the California Public Utilities Commission of the State of California ("CPUC"); and

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

NOW THEREFORE, in consideration thereof and for other valuable consideration as set forth herein, the parties hereto do mutually agree as follows:

## AGREEMENT

### SECTION 1: USES

1. **1.01 Premises.** City hereby authorizes Permittee, in accordance with the terms, covenants, conditions and provisions of this Agreement, the exclusive use of a portion of that certain parcel of City-owned real property commonly known as the San Francisco Peak Reservoir and located at 3471 Cannon Road, City of Oceanside, County of San Diego, State of California, as more particularly described on **Exhibit "A"** attached hereto (the "City Property"), which portion is described as a seventeen foot, four-inch (17'4") by thirty-three foot, four inch

(33'4") parcel containing approximately five hundred seventy-eight (578) square feet for Permittee's equipment, including a generator and related appurtenances (the "Equipment Space"), and an additional portion of ground space on the City Property sufficient for the installation of Permittee's proposed antenna structure (the "Tower Space") (hereinafter collectively referred to as the "**Premises**") being substantially as described herein in **Exhibit "B"** attached hereto and made a part hereof. 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.

**1.02 Ingress and Egress Over City Property.** City further grants to Permittee the non-exclusive right for ingress and egress over the City Property to the Premises, in order to install and access Permittee's Facilities (as defined in Section 1.03 below) on the Premises, in accordance with the terms as set forth herein below, 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. Any such ingress and egress over the City Property shall be accompanied by a City employee after Permittee has provided telephonic and/or e-mail notice to the City of the need to access the Premises. City agrees to respond to Permittee's request as expeditiously as reasonably possible given the date and time of the telephonic and/or e-mail notice.

In event of an afterhours (defined as between the hours of 7 p.m. and 7 a.m.) emergency, Permittee can contact the City's Water Utilities Department after hours dispatch at (760) 435-4912 or the City's Property Management Division at (760) 863-9224, in order to gain accompanied access to the Premises. The City will act with all due diligence in providing accompanied access through the City Property to allow Permittee to access the Premises.

Notwithstanding anything to the contrary contained in this Agreement, Permittee's use of Permittee's Facilities, as defined in Section 1.03 below, at the Premises shall be exclusive.

**1.03 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.

This Agreement is contingent upon Permittee obtaining a Conditional Use Permit or other applicable City of Oceanside, Development Services Department – Planning Division approvals ("Planning Approval"), for the uses as set forth in this Agreement upon the Premises. Upon obtaining Planning Approval, 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 Division of the City of Oceanside, and hereinafter referred to as "**Permittee Facilities**" (subject to permitted changes or modifications, as provided below). In the event Permittee does not obtain Planning Approval within three hundred and sixty (360) days from the Effective Date of this Agreement, either party shall have the right to terminate this Agreement by providing written notice to the other party.

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. City's approval for changes or modifications to the Premises or Permittee's Facilities shall not be required in connection with improvements that consist of upgrades or replacements of "like-kind" equipment which is comparable in dimensions and weight, or equipment which is wholly contained within Permittee's equipment room, shelter and/or cabinets, subject to compliance with all other applicable codes, ordinances, and/or regulations. 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 within ninety (90) days after the expiration or earlier termination of the Agreement; provided Permittee repairs any damage to the Premises caused by such removal. Within ninety (90) days after expiration or earlier termination of this Agreement, Permittee shall be required to remove all foundations placed or constructed on the Premises by Permittee.

**1.04 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.

**1.05 Relocation.** Commencing on the fifth (5<sup>th</sup>) annual anniversary of the Commencement Date (defined below) and anytime thereafter, in the event City is in need of the Premises for any future expansion of the City's water utilities infrastructure on City Property, of which the Premises is a part, the City reserves the right to require Permittee, on one (1) occasion, to relocate the Premises to a different portion of the City Property mutually agreeable to City and Permittee, so as not to interfere with such future expansion by City. The City shall give Permittee at least one hundred eighty (180) days written notice (the "Notice Period") of any such proposed location. Failure to relocate within said one hundred eighty (180) days shall be a considered a default of this Agreement. Notwithstanding the foregoing, Permittee shall not be required to relocate until such time that Permittee obtains all requisite governmental approvals and permits (collectively, "Approvals") related to such relocation; provided however that if the timeframe to obtain such Approvals exceeds the Notice Period or if City needs to proceed with its water utilities infrastructure project, Permittee shall be entitled to install a cell site on wheels ("COW") on a portion of the City Property, which location shall be reasonably determined by City, so long as operation and maintenance of the COW does not unreasonably interfere with the City's water utilities infrastructure project, for up to six (6) months, while it continues to seek the Approvals, subject to compliance with all applicable ordinances, codes and regulations. In the event the Approvals are not obtained within such six (6) month period despite Permittee's diligent efforts, City, in its reasonable discretion, shall extend the period of time during which the COW may remain on the City Property.

The relocation shall be at the sole cost and expense of Permittee. In the event that Permittee, in its sole and absolute discretion, determines that it is economically not feasible to relocate the Premises, Permittee shall have the right to terminate the Agreement by providing

City with written notice within one hundred eighty (180) days after receipt of the notice from City to relocate.

## **SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be for a period of **ten (10) years** and the Commencement Date shall be the earlier to occur of the following: (i) the first day of the month immediately following the date Permittee is granted a building permit by the governmental agency charged with issuing such permits, or (ii) the first day of the month which is six (6) months following the date of execution by both Parties. City and Permittee agree that they shall acknowledge in writing the Commencement Date in the event the Commencement Date is based upon the date Permittee is granted a building permit. In the event the Commencement Date is the fixed date set forth above, there shall be no written acknowledgement required. City and Permittee acknowledge and agree that initial rental payment(s) shall not actually be sent by Permittee until forty-five (45) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and no written acknowledgement confirming the Commencement Date is required, Permittee shall send to the City the rental payments for January 1 and February 1 by February 1, and if the Commencement Date is January 1 and a required written acknowledgement confirming the Commencement Date is dated January 14, Permittee shall send to the City the rental payments for January 1 and February 1 by February 13.

**2.02 Renewal Option.** Provided the Permittee is not in default of this Agreement (after the expiration of any applicable cure and grace period as provided in Section 5.11 below), this Agreement shall be automatically be extended for **two (2)** additional terms of **five (5) years** each (each, an "Additional Term") under the same terms and conditions of this Agreement unless Permittee terminates it at the end of the then current term by giving City written notice of the intent to terminate at least six (6) months prior to the end of the then current 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 Subsection 5.6 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 and No/100 Dollars (\$30,000.00)** which shall be payable monthly in advance at the rate of **Two Thousand Five Hundred and**

No/100 Dollars (\$2,500.00) 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".

**3.03 Minimum Property Use Payment Adjustment Date.** Commencing on the first annual anniversary of the Commencement Date (as defined in Subsection 2.01), and for each annual anniversary thereafter, the annual property use payment payable under the Agreement shall be increased by an amount equal to four percent (4%) of the annual property use payment in effect during the immediately preceding year.

**3.04 Additional Consideration.** Permittee shall also be required to pay a one (1) time additional consideration payment in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000). Said additional consideration is for the City to make the Permittee Facilities at the Premises compatible with City's communication facilities by addressing any potential radio frequency and/or other interference as more particularly described in Section 6.11 below.

**3.05 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 after receipt of notice of non-payment, 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.** Each party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

**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:

**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 rated at least A minus by AM Best, 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 thirty (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 on an ACORD or equivalent form, and applicable endorsements or blanket additional insured endorsements, concurrently with the submittal of this Agreement.

f. Permittee shall provide a substitute certificate of insurance within ten (10) business days after the policy expiration date without a lapse in coverage. 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 within thirty (30) days following receipt of written notice from City, 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 (1<sup>st</sup>) 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.

i. City, at its discretion, may require the reasonable revision of amounts and coverage at any time during the term of this Agreement by giving Permittee **sixty (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 reasonable additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

**4.03 Accident Reports.** Permittee shall, within **seventy-two (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 Waste, Damage, or Destruction.** Permittee shall give notice to City of any casualty or other damage that occurs on the Premises within seventy-two (72) hours of such casualty or damage. Permittee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises and/or and City improvements adjacent thereto shall be damaged by Permittee, its officers, agents, employees or anyone associated with Permittee, Permittee agrees to make or cause to be made full repair of said damage and to restore the Premises and/or City improvements adjacent thereto to the condition which existed prior to said damage; or, at City's option with respect to the Premises, and upon receipt of written demand thereof, Permittee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Permittee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises and/or City improvements adjacent thereto.

**5.02 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.

a. In the event that the City, in its reasonable discretion, determines that the Premises and/or the Permittee Facilities are not in a decent, safe, healthy, and sanitary condition, City shall provide written notice to Permittee indicating the same. After receipt of such written notice, Permittee shall have sixty (60) days in which to cure any breach of this Section, provided Permittee shall have such extended period as may be required beyond the sixty (60) days if the nature of the cure is such that it reasonably requires more than sixty (60) days and Permittee commences the cure within the sixty (60) day period and thereafter continuously and diligently pursues the cure to completion. In the event Permittee has failed to cure the breach, or commence such cure, within the time periods provided in this Paragraph, City shall have the right, upon written notice to Permittee, to have any reasonably necessary maintenance work done at the expense of Permittee, and Permittee shall promptly pay any and all reasonable 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 **forty-five (45) days** after receipt of invoice and reasonable supporting documentation from the City. Alternatively, in the event Permittee has failed to cure the breach, or commence such cure, within the time periods provided in this Paragraph, 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. City shall not require Permittee to file with City a faithful performance bond unless and until Permittee has failed to cure the breach within the time periods provided in this Paragraph. The rights reserved in this section shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City.

**5.03 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.

**5.04 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 (Permittee shall be permitted to install any such signage required by applicable law, provided said signage complies with all applicable City of Oceanside sign ordinances). If any such unauthorized item is found on the Premises, Permittee shall remove the item at its expense with twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Permittee's cost.

**5.05 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.

**5.06 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 delivered or mailed to the respective party as follows:

**To City:**

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

Telephonic or electronic notification to City to access the Premises:

Attention: Rosa Jones  
Telephone No. (760) 435-5176  
E-mail address: [rjones.ci.oceanside.ca.us](mailto:rjones.ci.oceanside.ca.us)

**To Permittee:**

Verizon Wireless (VAW) LLC  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, NJ 07921  
Attention: Network Real Estate  
Site: Ocean Hills

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

Communications shall be deemed to have been given 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. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

**5.07 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).

**5.08 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.

**5.09 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.

**5.10 Assignment and Subletting Prohibition.** This Agreement and/or any portion thereof shall not be assigned, transferred, sublet, licensed, mortgaged, hypothecated or otherwise result in a collocation of the Premises or of Permittee's Facilities (collectively, "Transfer"), nor shall any of the Permittee's duties be delegated, without the express written consent of City. Any attempt to Transfer this Agreement and/or any portion thereof without the express written consent of City shall be void and of no force or effect. Consent by City to one Transfer shall not be deemed to be consent to any subsequent Transfer. Notwithstanding a permitted Transfer, Permittee shall remain fully liable for the full performance of every obligation under this Agreement to be performed by Permittee.

Notwithstanding the foregoing, this Agreement may be sold, assigned or transferred by the Permittee without any approval or consent of the City to the Permittee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Permittee's assets in the market defined by the Federal Communications Commission in which the City Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned, provided such other parties are business entities similar to Permittee, approved by the Federal Communications Commission and have a similar net worth as Permittee. No change of stock ownership, partnership interest or control of Permittee or transfer upon partnership or corporate dissolution of Permittee shall constitute an assignment hereunder.

**5.11 Defaults and Termination.** This Agreement may be terminated, in addition to pursuing all other available legal and/or equitable remedies, by providing **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, and provided further that it shall not be deemed a default and the non-defaulting party shall not have the right to terminate this Agreement if the defaulting party commences the cure within the applicable cure period set forth herein and thereafter continuously and diligently pursues the cure to completion, and with respect to monetary defaults, the cure period for any such monetary default is **ten (10) days** from receipt of notice. Further, either party may terminate the Agreement for: (ii) any reason or for no reason, provided said 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; (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; or (v) by Permittee if Permittee, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary.

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

- a. Permittee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- b. Permittee shall be adjudicated a bankruptcy, or
- c. Permittee shall make a general assignment for the benefit of creditors.

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

**5.12 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.

**5.13 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 1.03 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 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.** City warrants and agrees 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 (as defined below) on, under, about or within City's Property in violation of any law or regulation. City and Permittee each agree that they will not use, generate, store or dispose of any Hazardous Material on, under, about or within City's Property in violation of any law or regulation. City and Permittee each agree to defend and indemnify the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any warranty or agreement contained in this paragraph. "Hazardous Material" shall mean any substance, chemical or waste identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

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 uninterrupted 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 (or may enter 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 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 liens, encumbrances and restrictions that would impair Permittee's use hereunder; (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.

**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 Subsection 1.03 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. Further, Permittee shall follow the procedure outlined in Subsection 1.01 above regarding access to the Premises.

**6.11 Interference.**

(a) Permittee acknowledges that the Premises is within a public facility 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 of which the Premises is a part,

provided that City and other user 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 (at no cost to Permittee). 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 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.

[Signatures appear on the following page.]

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 herein below.

**“City”**

CITY OF OCEANSIDE

Date: \_\_\_\_\_

By: \_\_\_\_\_

City Manager

APPROVED AS TO FORM:

By: *Pauline Hamilton, Esq.*  
City Attorney

**“Permittee”**

Verizon Wireless (VAW) LLC,  
dba Verizon Wireless

By: \_\_\_\_\_

Name: Walter L. Jones, Jr.

Its: Area Vice President Network

Date: 2/27/12

## EXHIBIT "A"

### *Legal Description of the City Property*

All that certain real property situated in the County of San Diego, State of California, described as follows:

That portion of Parcel 4 of Parcel Map No. 10839, in the City of Oceanside, County of San Diego, State of California, according to map thereof filed in the Office of the County Recorder December 24, 1980 described as follows:

Beginning at the Southwesterly terminus of that certain course in the boundary of said Parcel 4 having a bearing of North 47°53'14" East (radial) and a length of 484.68 feet; thence following the boundary of said Parcel 4, Southerly 163.97 feet along a nontangent curve concave Westerly and having a radius of 270 feet to the true point of beginning; thence South 07°18'59" East 113.65 feet to a curve concave Westerly and having a radius of 345 feet; thence Southerly along said curve 320.32 feet; thence South 45°52'53" West 167.95 feet to a curve concave Northerly and having a radius of 270 feet; thence leaving said boundary Southerly along said curve last mentioned 176.32 feet; thence South 81°23'16" West 58.91 feet to a curve concave Northerly and having a radius of 670 feet; thence Westerly along said curve 7.91 feet to the beginning of a compound curve concave Northerly and having a radius of 20 feet, a radial bearing through said point bears South 7°56'10" East; thence Westerly and Northerly along said curve 32.89 feet; thence North 03°42'04" West 168.84 feet to a curve concave Westerly and having a radius of 828 feet; thence Northerly along said curve 309.08 feet; thence North 25°05'20" West 167.49 feet to a curve concave Westerly and having a radius of 428 feet; thence Northwesterly along said curve 177.39 feet to a point on a nontangent line, a radial bearing through which bears North 41°09'53" East; thence along said nontangent line North 40°07'03" East 402.54 feet to a point on a nontangent curve concave Southerly and having a radius of 570 feet, to which point a radial bears North 29°04'36" East; thence Southerly along said curve 137.83 feet; thence South 47°04'06" East 347.11 feet to a curve concave Westerly and having a radius of 270 feet; thence Southerly 187.33 feet along said curve to the true point of beginning.

**EXHIBIT "B"**

*Description and Sketch Of The Premises To Be Attached Prior To Execution By Both Parties.*











PREPARED FOR



P.O. BOX 19707  
 IRVINE, CA 92613-9707  
 (949) 222-7000

APPROVALS

DATE	DATE	DATE	DATE	DATE	DATE
DATE	DATE	DATE	DATE	DATE	DATE
DATE	DATE	DATE	DATE	DATE	DATE
DATE	DATE	DATE	DATE	DATE	DATE
DATE	DATE	DATE	DATE	DATE	DATE
DATE	DATE	DATE	DATE	DATE	DATE

PROJECT NAME

**OCEAN HILLS**

3471 CANNON ROAD  
 OCCASIDE, CA 92056  
 SAN DIEGO COUNTY

DRAWING DATES

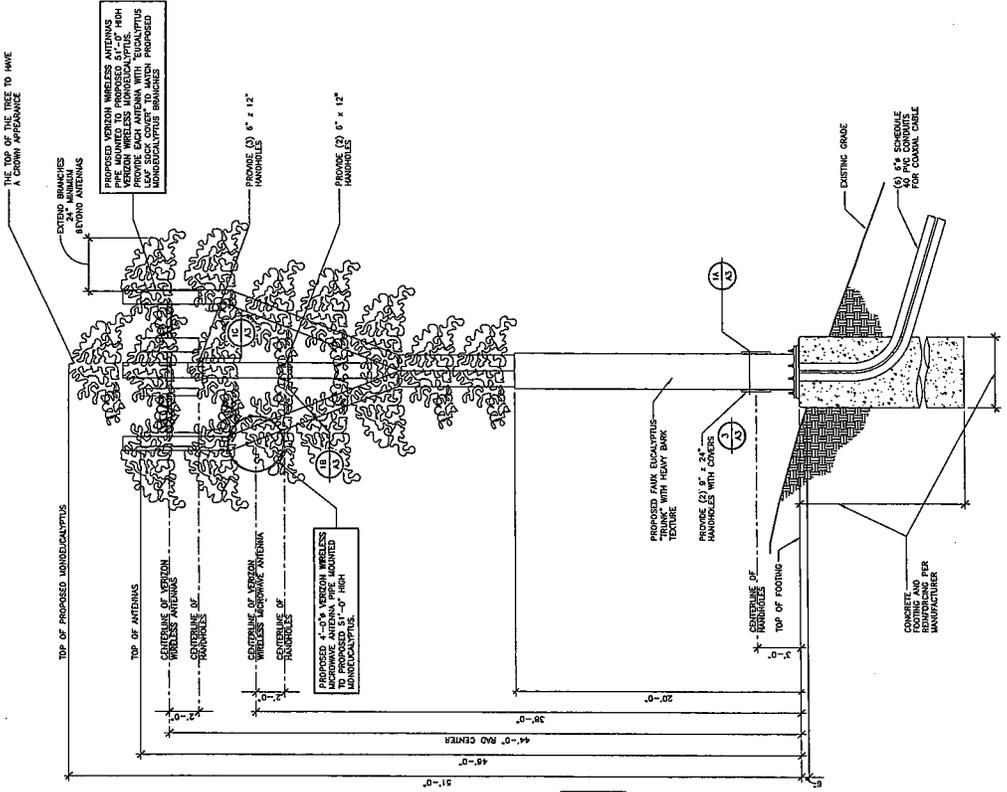
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01/18/11	02/02/11	02/02/11	02/02/11	02/02/11	02/02/11

SHEET TITLE

**MONOEUCALYPTUS  
 ELEVATION  
 ANTENNA PLAN  
 & DETAILS**

PROJECT'S VERSION: (03) 04d

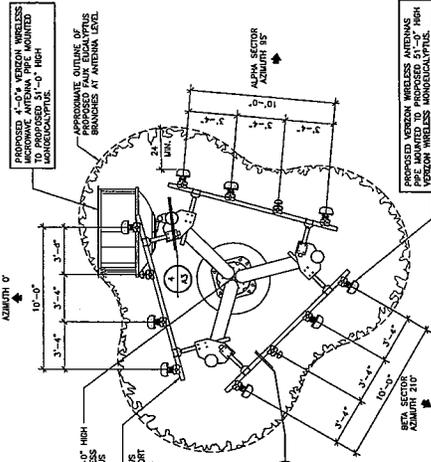
**A-3**



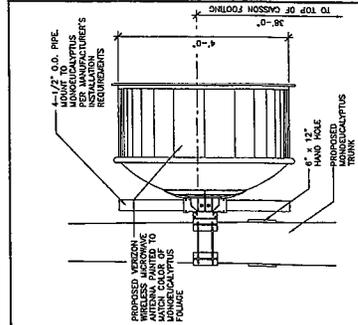
**MONOEUCALYPTUS ELEVATION**  
 SCALE 1/2"=1'-0"

MONOEUCALYPTUS CELL TREE MANUFACTURE SHALL BE INSTALLED AT ANY TREE.

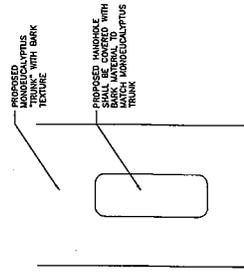
NOTE: NO EXPOSED PIPES ASSEMBLY ANTENNAS SHALL BE INSTALLED AT ANY TREE.



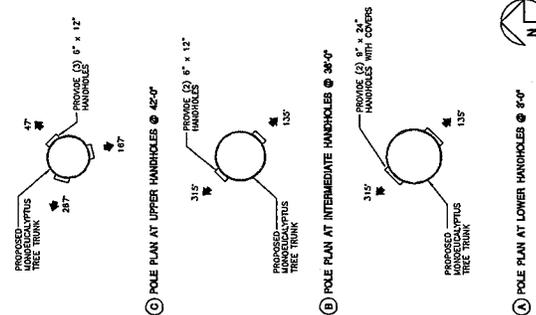
**ANTENNA PLAN**  
 SCALE 1/2"=1'-0"



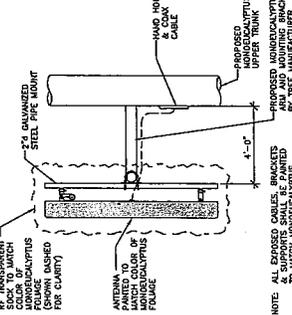
**TYPICAL ANTENNA MOUNT**  
 SCALE 1/2"=1'-0"



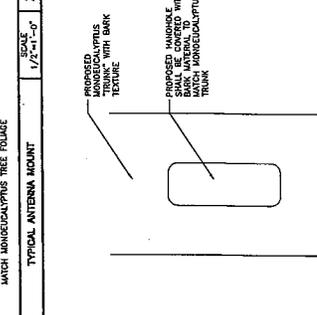
**HANDHOLE COVER**  
 SCALE 1/2"=1'-0"



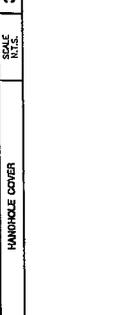
**HANDHOLE DETAIL**  
 SCALE N.T.S.



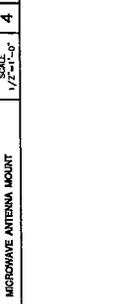
**TYPICAL ANTENNA MOUNT**  
 SCALE 1/2"=1'-0"



**HANDHOLE COVER**  
 SCALE 1/2"=1'-0"



**MICROWAVE ANTENNA MOUNT**  
 SCALE 1/2"=1'-0"



**HANDHOLE COVER**  
 SCALE 1/2"=1'-0"

