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*Request for Proposals*

**TELECOMMUNICATIONS FACILITIES  
LEASE AT SANTA ROSA PARK**

**Specification No. 90905**

**August 16, 2010**

**Notice Requesting Proposals for**  
**TELECOMMUNICATIONS FACILITIES LEASE**  
**AT SANTA ROSA PARK**

The City of San Luis Obispo is requesting sealed proposals for a telecommunications facilities lease at Santa Rosa Park, located at 190 Santa Rosa Avenue, San Luis Obispo, pursuant to Specification No. 90905.

**Proposal Closing Date**

All proposals must be received by the Finance Division by **3:00 PM on Thursday, September 9, 2010**, when they will be opened publicly in the City Hall Council Chambers, 990 Palm Street, San Luis Obispo, CA 93401. Proposals received after said time will not be considered. To guard against premature opening, each proposal shall be submitted to the Finance Division in a sealed envelope plainly marked with the proposal title, specification number, proposer name, and time and date of the proposal opening. Proposals shall be submitted using the forms provided in the specification package.

**Pre-Proposal Conference/Site Walk Through**

A pre-proposal site walk through will be held on **September 1, 2010 at 1:00 p.m.** at Building "B" in Santa Rosa Park, 190 Santa Rosa Avenue, to answer any questions that the prospective proposers may have regarding the City's request for proposals.

**For More Information**

Specification packages and additional information may be obtained by contacting Rachel Messner, Department of Finance & Information Technology, at (805) 781-7521 or via e-mail at [rmessner@slocity.org](mailto:rmessner@slocity.org).

## Specification No. 90905

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## **Section A DESCRIPTION OF WORK**

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### **OVERVIEW**

Santa Rosa Park in the City has two structures (Building A and Building B) built in 2003 that were processed and approved for wireless telecommunication facilities. Available space currently exists in one side of Building B. The City is interested in receiving proposals from wireless telecommunication companies who are interested in renting the available space.

**Opportunity:** It is likely that proposers will be subject to minimal design or use approval, as this site has been previously reviewed for this purpose, subject to continuing compliance with the terms of approval previously adopted by the City's Architectural Review and Planning Commission. The details of this approval are included in this request for proposals, and for any additional information, proposers are encouraged to contact Tyler Corey, Associate Planner, at [tcorey@slocity.org](mailto:tcorey@slocity.org), or 805.781.7169.

**Background:** The City Council approved the concept of leasing sites at Santa Rosa Park to wireless communication companies on December 11, 2001. As a result, the City entered into a lease agreement with a wireless communication provider in 2002 (with one subtenant), and the structures were specifically built according to the design criteria submitted by the companies as guided by the City's standards and architectural review process.

This Request for Proposals (RFP) sets forth the process to be used in selecting an additional "Lessee" at Santa Rosa Park and our minimum "business" terms.

It is important to note that while the City is open to the concept of leasing additional space at Santa Rosa Park for wireless communication purposes, it is not a "strategic goal" for the City. As such, the City will only enter into a lease agreement if it meets expectations from both a regulatory and a proprietary perspective. Because of this, the City reserves the right to reject all proposals and not enter into an agreement with anyone.

### ***Building "B" Description***

The City's building "B" at Santa Rosa Park is comprised of the following spaces:

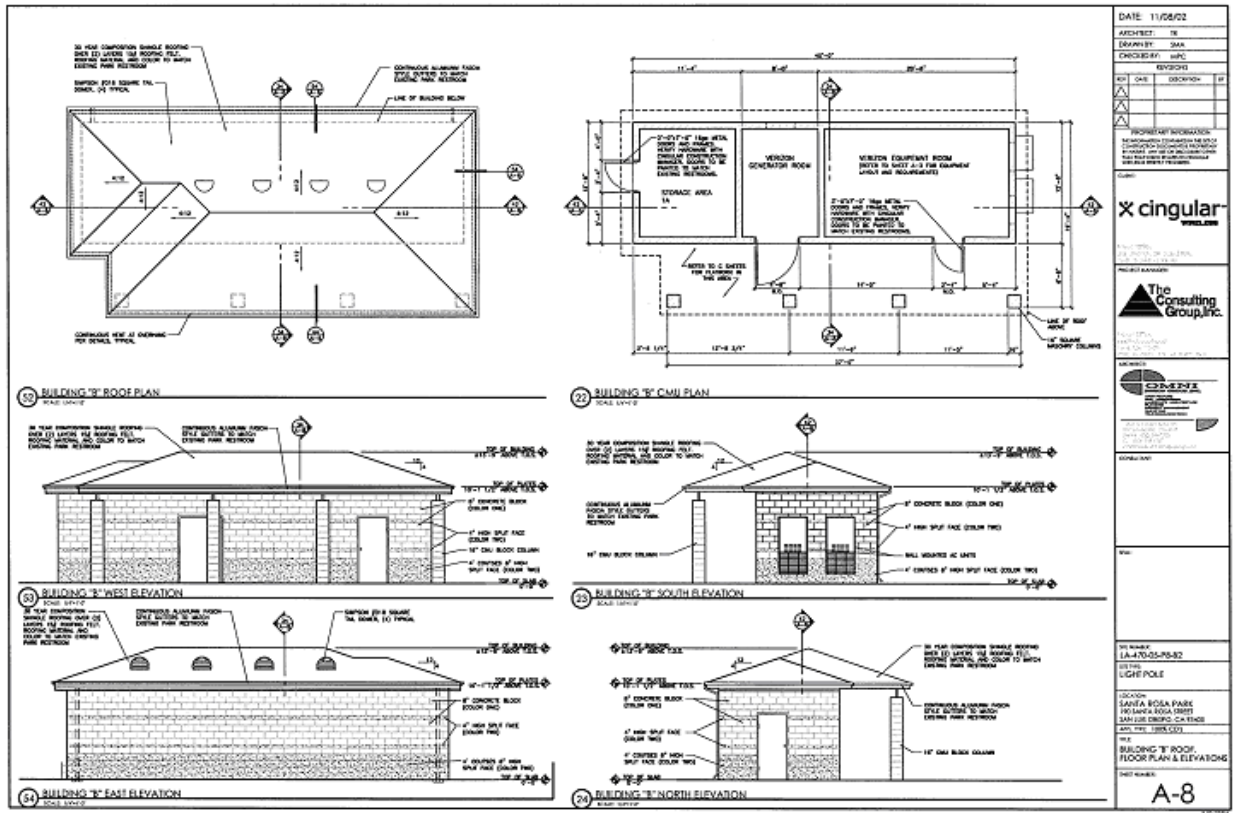
1. Verizon wireless equipment room
2. Verizon emergency generator room
3. An available 10' x 11'- 4'' x 10' (height) concrete block communications room with one metal entry door.

The available communication room is equipped with the following:

1. 150 amp electrical panel which feeds the interior lighting and two isolated, grounded 20 amp receptacles
2. Conduit infrastructure
  - a. One 2'' conduit terminates in the AT&T terminal cabinet located on "building A". AT&T telephone and T1 service is available via this conduit.



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PHOTOGRAPH – Building B



**PHOTOGRAPH – Monopole Tower and Antennas (Note: there are two monopole towers.)**



**PROPOSED APPROACH**

*City’s Proprietary versus Regulatory Role.* As discussed in more detail later in this RFP, the City is issuing this RFP in its “proprietary” role as a property owner. This is separate and distinct from the City’s regulatory role, which we would play regardless of where wireless communications facilities were being proposed in the City. The process set forth under this RFP is expressly designed to keep these two roles separate and distinct.

On the other hand, because communication uses are already in place at this site, including towers and equipment room, the discretionary approval process for any new use is likely to be straightforward.

**Key “Business” Terms**

Included in Section D is the City’s proposed “base” lease agreement, which sets forth minimum “business” requirements. The key requirements include:

1. **Annual Rent.** The minimum annual rent, payable annually in advance, will be determined via negotiations with lessee. This amount will increase annually by increases in the U.S. Consumer Price Index, All Urban Consumers (CPI-U) or 3%, whichever is greater.
2. **Term.** The initial term of the lease is 5 years, commencing with the issuance of a building permit. Three additional renewal terms of 5 years each are available at the discretion of the lessee, for a total term of 20 years.

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3. **Subtenants.** The Lessee may sublease its facilities at this site. However, the Lessee shall pay “additional rent” for each subtenant in the same amount (and subject to the same conditions) as its “base” rent. However, given the limited space available, it is unlikely that there will be subtenant options at this site.
4. **Proposed Changes to the Base Lease Agreement.** Proposers may propose changes to any of the terms and conditions in the “base lease agreement.” However, the City will favorably consider those proposals that come closest to meeting (or exceeding) the terms and conditions in the “base lease agreement.” As noted above, if none of the proposals meet what the City believes to be a minimally acceptable lease agreement—as determined solely by the City exercising its own judgment and discretion—the City will not enter into an agreement with anyone.

### Separating Our Proprietary Versus Regulatory Role

In the event the Lessee determines that site improvements are needed, the City, in its “regulatory role,” cannot guarantee permit approvals in the lease agreement. However, the City recognizes that proposers cannot responsibly enter into the development review process without knowing the “business” terms of the lease. To address this, a “two-step” process is proposed:

1. **Memorandum of Understanding (MOU).** After selecting the best proposal, the City will enter into an MOU with the prospective Lessee outlining the basic “business” terms of the lease that the City will enter into after the prospective Lessee has received all of its regulatory approvals. The “base” MOU is provided in Section D.1 (page 12).
2. **Lease Agreement.** After the prospective Lessee has received all of its regulatory approvals and any other pre-conditions, the City will enter into the “base” lease agreement provided in Section D.2 (page 15).

As noted previously, because these uses are already in place at this site, including antenna towers and an already constructed facility, the discretionary approval process for this project is likely to be straightforward, summarized as follows:

- a. Staff level architectural review
- b. Building permit

### Proposal Submittal and Evaluation Process

The guidelines for the City’s proposal submittal and evaluation process are outlined in Sections B and C. As noted in the proposal evaluation guidelines, the City will consider factors other than “price” in making its contract award decision.

## **Section B GENERAL TERMS AND CONDITIONS**

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### **PROPOSAL REQUIREMENTS**

1. **Requirement to Meet All Provisions.** Each individual or firm submitting a proposal (proposer) shall meet all of the terms, and conditions of the Request for Proposals (RFP) specifications package. By virtue of its proposal submittal, the proposer acknowledges agreement with and acceptance of all provisions of the RFP specifications.
2. **Proposal Submittal.** Each proposal must be submitted on the form(s) provided in the specifications and accompanied by any other required submittals or supplemental materials. Proposal documents shall be enclosed in an envelope that shall be sealed and addressed to the Finance Division, City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA, 93401. In order to guard against premature opening, the proposal should be clearly labeled with the proposal title, specification number, name of proposer, and date and time of proposal opening. No FAX submittals will be accepted.
3. **Insurance Certificate.** Each proposal must include a certificate of insurance showing:
  - a. The insurance carrier and its A.M. Best rating.
  - b. Scope of coverage and limits.
  - c. Deductibles and self-insured retention.

The purpose of this submittal is to generally assess the adequacy of the proposer's insurance coverage during proposal evaluation; as discussed under paragraph 10 below, endorsements are not required until contract award. The City's insurance requirements are detailed in the "base" lease agreement provided in Section D.2.

4. **Proposal Withdrawal and Opening.** A proposer may withdraw its proposal, without prejudice prior to the time specified for the proposal opening, by submitting a written request to the Director of Finance & Information Technology for its withdrawal, in which event the proposal will be returned to the proposer unopened. No proposal received after the time specified or at any place other than that stated in the "Notice Requesting Proposals" will be considered. All proposals will be opened and declared publicly. Proposers or their representatives are invited to be present at the opening of the proposals.
5. **Submittal of One Proposal Only.** No individual or business entity of any kind shall be allowed to make or file, or to be interested in more than one proposal, except an alternative proposal when specifically requested; however, an individual or business entity that has submitted a sub-proposal to a proposer submitting a proposal, or who has quoted prices on materials to such proposer, is not thereby disqualified from submitting a sub-proposal or from quoting prices to other proposers submitting proposals.

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6. **Communications.** All timely requests for information submitted in writing will receive a written response from the City. Telephone communications with City staff are not encouraged, but will be permitted. However, any such oral communication shall not be binding on the City.

### CONTRACT AWARD AND EXECUTION

7. **Proposal Retention and Award.** The City reserves the right to retain all proposals for a period of 60 days for examination and comparison. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. See the "special terms and conditions" in Section C of these specifications for proposal evaluation and contract award criteria.
8. **Competency and Responsibility of Proposer.** The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of proposers. Proposers will provide, in a timely manner, all information that the City deems necessary to make such a decision.
9. **Contract Requirement.** The proposer to whom award is made (Contractor) shall execute a *Memorandum of Understanding* with the City within ten (10) calendar days after notice of the award has been sent by mail to it at the address given in its proposal. The *Memorandum of Understanding* and subsequent *Communications Facilities Lease* shall be made in the form adopted by the City and incorporated in these specifications.
10. **Insurance Requirements.** The Contractor shall provide proof of insurance in the form, coverages and amounts specified in *Communications Facilities Lease* within ten (10) calendar days after Notice to Proceed as a precondition to contract execution.
11. **Business Tax.** The Contractor must have a valid City of San Luis Obispo business tax certificate before execution of the *Communications Facilities Lease*. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.

### CONTRACT PERFORMANCE

12. **Ability to Perform.** The Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.
13. **Laws to be Observed.** The Contractor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.
14. **Payment of Taxes.** The contract prices shall include full compensation for all taxes that the Contractor is required to pay.
15. **Permits and Licenses.** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.

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16. **Safety Provisions.** The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
17. **Public and Employee Safety.** Whenever the Contractor's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
18. **Preservation of City Property.** The Contractor shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from the Contractor's operations, it shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.
19. **Immigration Act of 1986.** The Contractor warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
20. **Work Delays.** Should the Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Contractor. In the event that there is insufficient time to grant such extensions prior to the completion date of the contract, the City may, at the time of acceptance of the work, waive liquidated damages that may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.
21. **Inspection.** The Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of the Contractor are being performed in accordance with the requirements and intentions of this contract. All work done and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.
22. **Interests of Contractor.** The Contractor covenants that it presently has no interest, and shall not acquire any interest—direct, indirect or otherwise—that would conflict in any manner or degree with the performance of the work hereunder. The Contractor further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Contractor certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, the Contractor shall at all times be deemed an independent contractor and not an agent or employee of the City.

## **Section C**

### **SPECIAL TERMS AND CONDITIONS**

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1. **Submittal of References.** Each proposer shall submit a statement of qualifications and references on the form provided in the RFP package.
2. **Statement of Contract Disqualifications.** Each proposer shall submit a statement regarding any past governmental agency bidding or contract disqualifications on the form provided in the RFP package.
3. **Joint Proposal.** More than one communications provider may propose to enter into a lease agreement with the City under one proposal. In this case, the proposal should identify the companies included in the joint proposal. The City would prefer to enter into an agreement with one provider, with the other proposers acting as sublease tenants as described in the “base” lease agreement.
4. **Authorized Representative.** If the individual or firm making the proposal is not an employee of the communication provider but is acting as an authorized representative for it (or them), supporting documentation for this—such as an original letter from the communication provider stating that the representative is authorized to act of their behalf on this matter—must be submitted with the proposal.
5. **Proposal Content.** Your proposal must include the following information, organized in the same order:

#### ***Submittal Forms***

- a. Proposal submittal summary, including any proposed deviations or changes from the City’s “base” lease agreement. If more than one communications provider is proposing to enter into a lease agreement with the City under one proposal, all such companies should be noted in the Proposal Submittal Summary.
- b. Certificate of insurance.
- c. References from at least three firms for whom you have entered into similar site leases.
- d. Statement of past contract disqualifications.
- e. If the individual or firm making the proposal is not an employee of the communication provider but is acting as an authorized representative for it (or them), supporting documentation for this—such as an original letter from the communication provider stating that the representative is authorized to act of their behalf on this matter—must be submitted with the proposal.

*Note: For ease of electronic preparation, proposers may prepare their own proposal submittal forms as long as they contain the same information in a similar format.*

#### ***Work Program***

- f. Description of your approach to obtaining discretionary approvals and then making other needed improvements with minimal disruption to normal park activities.
- g. Tentative schedule for obtaining discretionary approvals and completing improvements.

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- h. General schematic and site plan for any proposed improvements on the site.

***Qualifications***

- i. Experience of your firm in entering into similar site leases.
- j. Resumes of the individuals who would be assigned to this project, including any sub-consultants.
- k. Any other information that would assist us in making this lease award decision.

***Proposal Length and Copies***

- l. Proposals should include attachments and supplemental materials.
- m. Five copies of the proposal must be submitted.

**6. Proposal Evaluation and Selection.** Proposals will be evaluated by a review committee based on the following criteria:

- a. Quality, clarity and responsiveness of the proposal.
- b. Proposed approach in completing the work.
- c. References.
- d. Recent experience in successfully entering into communication facilities site agreements.
- e. Background and related experience of the specific individuals to be assigned to this project.
- f. Proposed annual rent, annual rent adjustment, minimum term and conformity with other terms and conditions of the City’s base lease agreement.

As reflected above, contract award will not be based solely on the proposed lease compensation, but on a combination of factors as determined to be in the best interest of the City. After evaluating the proposals and discussing them further with the finalists or the tentatively selected contractor, the City reserves the right to further negotiate the proposed work and/or method and amount of compensation.

**7. Proposal Review and Award Schedule.** The following is an outline of the anticipated schedule for proposal review and contract award:

- a. Issue RFP 8/16/10
- b. Conduct pre-proposal conference/site walk through 9/1/10
- c. Receive proposals 9/9/10
- d. Complete proposal evaluation 9/30/10
- e. Follow-up with finalist(s) on their proposal; conduct background checks 10/8/10

***Depending on Results of Follow-Up Work and Complexity of Proposals***

- f. Finalize staff recommendation 10/15/10
- g. Council approves Memorandum of Understanding (MOU) 11/2/10

**8. Pre-Proposal Conference/Site Walk Through.** A pre-proposal conference will be held at the following location, date and time to answer any questions that prospective proposers may have regarding this RFP:

Santa Rosa Park, Building “B”



**Section D.1**  
**“BASE” MEMORANDUM OF UNDERSTANDING**

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made on \_\_\_\_\_ 2010, by and between the City of San Luis Obispo, a municipal corporation and Charter City (the “City”) and \_\_\_\_\_ (“Contractor”).

**RECITALS**

WHEREAS, the Contractor desires to lease the City’s communication room in building B at Santa Rosa Park for a wireless communications facility; and

WHEREAS, the City is willing to lease said portion of building B to the Contractor upon the terms and conditions set forth in Exhibit 1, provided that Contractor is able to obtain all discretionary approvals required by the City in its municipal and regulatory capacity; and

WHEREAS, this MOU is non-binding in nature.

Now, therefore, the parties have prepared the following MOU:

**1. PROJECT DESCRIPTION**

The “project” consists of a wireless communications facility at Santa Rosa Park, utilizing the City’s communication room in Building B and existing antenna towers, as follows, and in accordance with the conceptual site plan provided in Exhibit 2:

- a. *Description of plan*
- b. *Any other minor improvements necessary to complete project*

**2. APPROVAL OF IMPROVEMENTS**

In its capacity as the owner of Santa Rosa Park, and separate from its capacity as regulator, the City shall have rights of specific approval and review of all designs and plans, initially at the concept and schematic plan level, and subsequently at the final plans as set forth herein. Upon execution of the MOU, the Public Works and Community Development Directors shall review and approve the preliminary design. After approval of the preliminary design, Contractor shall submit to the Public Works Director and Community Development Directors the final plans for the project. Within 30 days of such submission, the City shall exercise its final right of review and approval of such plans. These rights shall be supplemental to and not concurrent with its rights of review and approval in connection with its regulatory functions.

3. CONTINGENCIES TO LEASE SIGNING

In its capacity as landowner, the City is under no obligation to enter into any lease until the development review process is concluded and all discretionary approvals are obtained and such other requirements as may pertain to final entitlement and approval of this project are fulfilled.

4. OTHER MUNICIPAL PROCESSING

- a. The Parties understand and agree that those approvals required of the City acting in its governmental or regulatory capacity are separate and distinct from those approvals required by the City under this MOU. Notwithstanding anything to the contrary in this MOU, nothing herein shall be interpreted to mean that the City is any way waiving, limiting or weakening any regulatory or police power the City may have in any of its governmental capacities. It is intended that the Contractor shall be obligated to fulfill such requirements as may be imposed by the City or any other governmental agency or authority having or exercising any jurisdiction over the project or over any construction to be undertaken by Contractor in, on or about said project.
- b. Refusal or failure by the City in its governmental or regulatory capacity to take a legislative action, issue any permit, license or any other action or approval sought by the Contractor for construction of improvements on, or development of, the project shall not constitute a breach of this MOU.

5. NON-BINDING NATURE OF THE AGREEMENT

- a. Without obligating either of the parties, this MOU summarizes what the Contractor and the City perceive to be the major deal points with respect to the project. No binding obligation is created by this MOU or can be created other than by execution of a Communications Facilities Lease in the form attached hereto as Exhibit 1. Notwithstanding the foregoing, the parties agree that if a Communications Facilities Lease is entered into between the parties, it shall substantially include the terms of this MOU.
- b. This MOU is an outline for discussion purposes only, is not intended to be contractual or binding for any purpose and is not an offer or representation by either party. It is designed to reflect the ideas being formulated, to provide a framework to attempt to resolve issues and concerns that have been raised, as well as for the resolution of issues and concerns which may arise. In some instances, a tentative but not binding, agreement on a matter is referred to, and in other instances, material agreements are yet to be defined and specified. The fact that any particular component or issue is not addressed in this MOU does not mean that it cannot be the subject of future discussions and negotiations, and the fact that a component is addressed does not mean that it cannot be rejected or modified by either party. The Contractor further acknowledges and agrees that the officers and employees of the City, do not have authority to bind the City, and the final form of any proposed lease to be negotiated may have to contain matters not contemplated by this MOU. The parties acknowledge that neither party will be contractually bound to any agreement nor to any element of the proposed development until the final execution of a mutually acceptable lease approved and executed by authorized representatives. Alternatively, either of the parties may determine that further negotiations will not be fruitful and then terminate this MOU or allow this MOU to lapse without further liability to the other.

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6. ACCEPTANCE AND ACKNOWLEDGEMENT

ATTEST:

CITY OF SAN LUIS OBISPO

\_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

CONTRACTOR

\_\_\_\_\_  
City Attorney

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

LIST OF EXHIBIT:

Exhibit 1: Form of Communications Facilities Lease

**Section D.2**  
**“BASE” COMMUNICATIONS FACILITIES LEASE**

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COMMUNICATIONS FACILITIES LEASE

This Lease is made and entered into on \_\_\_\_\_, 2010, by and between the CITY OF SAN LUIS OBISPO, a municipal corporation and charter city (hereinafter referred to as “Lessor”), and \_\_\_\_\_, a \_\_\_ corporation (hereinafter referred to as “Lessee”).

RECITALS

This Lease is made and entered into with respect to the following facts:

A. Lessor is the owner of property described in Exhibit A, located at 190 Santa Rosa Street, San Luis Obispo, California, commonly known as “Santa Rosa Park.”

B. Lessor is willing to lease certain Premises on this property as described in Section 1 to Lessee upon the terms and conditions hereinafter set forth.

C. Lessee warrants that use of these Premises will not interfere with the Department of Parks and Recreation’s operations or the public’s use of the park.

D. This Lease is conditioned upon Lessee obtaining all governmental permits and approvals enabling Lessee to operate a wireless communications facility in the Premises, described in Exhibit B as “the project” and as defined below.

E. Lessor and Lessee have heretofore entered into a Memorandum of Understanding dated \_\_\_\_\_, 2010, concerning the lease of a City site located at Santa Rosa Park.

NOW THEREFORE, the parties hereto agree as follows:

1. Premises. Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to lease from Lessor approximately one hundred and ten (110) square feet of building space, know as the City’s communication room in building B, and all access and utility easements, including space on one of the two antenna towers, described in Exhibit A attached hereto, and by this reference made a part hereof

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(hereinafter referred to as the “Premises”). This Lease is subject to the terms, covenants and conditions hereinafter set forth and Lessee covenants, as a material part of the consideration for this Lease, to keep and perform each and every term, covenant and condition of said Lease.

During the term of this Lease, Lessor also grants to Lessee an irrevocable, nonexclusive right of ingress and egress, seven days a week, twenty-four (24) hours a day, and the right to install and maintain underground utility wires and cables through existing conduits.

2. Improvements. Lessee shall be allowed to make minor improvements, such as the addition of air conditioning or for the provision of emergency electrical service, as necessary to successfully complete this project. Plans for improvements shall have the prior written approval of Lessor in its municipal capacity (not its capacity as landlord). Lessee shall dedicate any permanent improvements, such as the addition of a generator, HVAC system or changes to the electrical system, to Lessor upon completion thereof.

3. Term. The term of this Lease shall be for five (5) years (“Initial Term”) commencing with the issuance of a City building permit to construct any improvements (“Commencement Date”). This Lease shall automatically be renewed, on the same terms and conditions, for three (3) additional terms (each a “Renewal Term”) of five (5) years each, unless Lessee notifies Lessor of its intention not to renew, at least sixty (60) days Prior to the expiration of the Initial Term or any Renewal Term.

4. Rent. Rent shall be paid annually in advance as follows:

A. Lessee shall pay to Lessor as annual rent on or before the Commencement Date of the Lease the sum of \_\_\_\_\_ (Amount) (“Annual Rent”) without deduction, setoff, notice or demand provided.

B. Annually thereafter, Lessee shall pay to Lessor as Annual Rent for that lease year without deduction, setoff, notice, or demand the prior year Annual Rent increased by changes in the U.S. Consumer Price Index, All Urban Consumers (CPI-U) or 3%, whichever is greater.

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C. If Lessee fails to pay the Annual Rent within fifteen (15) days after such rent is due, Lessee shall pay a late fee of Two Thousand Dollars (\$2,000). This late charge does not establish a grace period. Lessor and Lessee agree that the charge is presumed to be the damages sustained by Lessor for Lessee's late payment of rent and that it is impracticable or difficult to fix the actual damages.

5. Use.

A. Lessee shall use the Premises for the sole purpose of maintaining, securing and operating wireless communications facilities (including but not limited to cellular, PCS, paging, and broad band). Any other use of the Premises or use of equipment not described in Exhibit "B," is not authorized and shall constitute a breach of this Lease.

B. Lessee must obtain all discretionary permits and approvals required by Lessor in its municipal capacity. Installation of a new wireless telecommunication facility at this location shall require architectural review. The applicant shall submit application materials and fees as required by the Community Development Department. The Premises shall not be modified prior to obtaining any required City building permit. It shall be the responsibility of the owner/operator of a telecommunications facility to provide the City with a notice of intent to modify site in any way. Lessor shall reasonably cooperate (at no expense to Lessor) with Lessee in connection with Lessee's efforts to obtain all such permits and approvals; provided, however, Lessor shall not be obligated to apply for any permits or approvals with Lessee. Lessee shall maintain the Lessee's Facilities free from hazards or risk to the public health, safety and welfare.

C. At all times throughout the term of this Lease, Lessee's use of the Premises shall be in conformance with, and subject to all conditions of, any and all discretionary permits in effect.

D. Lessor agrees that Lessee's ability to use the Premises is dependent upon Lessee's obtaining all necessary certificates, permits and/or other approvals which may be required from Lessor in its municipal or regulatory capacity and from any federal, state or other local authority. Lessor agrees to cooperate with Lessee as to Lessee's obtaining such certificates, permits or other approvals. In

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the event Lessee is unable to obtain any necessary certificate, permit or other approval in order to operate a wireless communication facility, Lessee may terminate this Lease as provided herein, upon thirty (30) days prior written notice.

6. Interference.

A. Lessee warrants that its operations in or repair of Lessee's Premises will not interfere with Lessor's fire, police, public works and other public safety or City department communication broadcasts or frequencies. All operations by Lessee shall be in compliance with all Federal Communications Commission requirements and all applicable laws.

B. If Lessor suspects or has reason to believe that Lessee's use of the Premises creates radio or television interference for nearby residents or interference with Lessor's communication systems, and if Lessee does not proceed diligently to eliminate or identify such interference within ten (10) business days after notice from Lessor to do so, Lessor may immediately terminate this Lease by giving notice to Lessee.

C. Lessee shall provide Lessor with a contact person who shall be available twenty-four (24) hours a day to receive reports of any interference with Lessor's frequencies. Lessor may report such interference to \_\_\_\_\_ (Name, Title, Address, Phone, Pager Cellular Nos. etc.). In the event that there is interference with Lessor's public safety frequencies, Lessee shall immediately cease the operations creating the interference when directed to do so by the City's Fire Chief and/or Police Chief until such time that the interference can be eliminated to the satisfaction of the City's Fire Chief and/or Police Chief. Lessee's failure to immediately cease such operations shall be considered a material breach of this Lease notwithstanding Paragraph 6.B. above.

7. Radio Frequency Emission Exposure.

A. No wireless telecommunication facility shall be sited or operated in such a manner that it violates any condition of its Federal Communication Commission's (FCC) permit or license. To that end no facility or combination of facilities shall produce at any time power densities in any inhabited

## **Request for Proposals: Telecommunications Facilities Lease at Santa Rosa Park**

area that exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any more restrictive legally enforceable and applicable standard subsequently adopted or promulgated by the city, county, the state of California, or the federal government. For purposes of radio frequency emissions, compliance with FCC exposure limitations shall constitute a conclusive presumption that there is no hazard or risk to the public health, safety or welfare.

B. Initial compliance with this requirement shall be demonstrated for any facility within three hundred (300) feet of residential uses or sensitive receptors such as schools, churches, hospitals, etc. and all broadcast radio and television facilities, regardless of adjacent land uses, through submission, at the time of application for the necessary permit or entitlement, calculations specifying MPE levels in the inhabited area where the levels produced are projected to be highest. If these calculated levels exceed eighty percent (80%) of the MPE limits, the applicant shall hire a qualified electrical engineer licensed by the State of California to measure exposure levels at the location after the facility is in operation. A report of these measurements and the engineer's findings with respect to compliance with MPE limits shall be submitted to the Community Development Director. Lessee's Premises shall not commence normal operations until it complies with, or has been modified to comply with this standard. Proof of compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

C. Every wireless telecommunication facility within three hundred (300) feet of an inhabited area and all broadcast radio and television facilities shall demonstrate continued compliance with its FCC permit or license and MPE limits. Every five (5) years a report listing each transmitter and antenna present at the facility and the effective radiated power radiated shall be submitted to the Community Development Director. If either the equipment or effective radiated power has increased, calculations specifying exposure levels in the inhabited areas where the levels are projected to be highest shall be prepared. Calculations shall also be prepared every time the adopted MPE limits change. If

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calculated levels in either of these cases exceed eighty (80%) of the MPE limits, the operator of the facility shall hire a qualified electrical engineer licensed by the State of California to measure the actual exposure levels produced. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with the current MPE limits shall be submitted to the Community Development Director within five (5) years of facility approval and every five (5) years thereafter. In the case of a change in the limits, the required report shall be submitted within ninety (90) days of the date the change becomes effective.

D. Failure to supply the required reports or to remain in continued compliance with any FCC license, permit or MPE limits shall be considered a material breach of this Lease.

8. Visual Mitigation. Lessee will use a variety of visual mitigation strategies for all of its facilities, as determined necessary by the Community Development Director and as required through the Architectural Review process, with the goal of achieving a 100% stealth installation. Facilities shall be creatively designed to minimize the visual impact to the greatest extent possible by means of placement, screening and camouflage. The applicant shall use the smallest and least visible antennas possible to accomplish the coverage objectives. The project shall be designed to blend into its surroundings so that the antenna(s) and equipment are not apparent to the casual observer. Ground mounted support equipment shall be undergrounded or otherwise screened from view so as to be effectively unnoticeable. All connections between the base of the antenna(s) and support equipment shall be undergrounded using existing conduit. Electrical and telephone service to the support equipment shall be undergrounded using existing conduit.

9. Noise. Each facility shall be operated in a manner that minimizes any possible disruption caused by noise to people working and living in the vicinity. At no time shall equipment noise from any source exceed an exterior noise level of 55 dB at the property line or within 20 feet of such equipment, whichever is less. This requirement may be modified at the discretion of the Community Development Director where typical ambient noise levels exceed 55 dB. Outdoor noise producing construction

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activities shall take place only on weekdays between the hours of 8:00 am and 5:00 pm. Any facility utilizing temporary backup generators shall be required to meet or exceed Air Pollution Control District Standards. All generators shall be fitted with approved air pollution control devices. Projects that propose to include backup generators shall require review and approval from the Air Pollution Control District. Project plans shall indicate location, size, horsepower and type of fuel used for any proposed generator. Generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 10:00 am and noon.

10. Nondiscrimination. Subject to applicable laws, rules, and regulations, Lessee shall not discriminate against any person or group on the basis of age, sex, sexual orientation, AIDS, AIDS related condition, marital status, race, religion, creed, ancestry, national origin, disability, or handicap.

11. Subsurface Restrictions. The parties agree that this Lease covers only the surface of the Premises and only so much of the subsurface as is reasonably necessary for Lessee's use of the Premises as permitted in this Lease (including, without limitation, cables, conduits and pipes within the Premises to connect Lessee's communications equipment from building B to an existing antenna tower).

12. Liens. Lessee shall keep the Premises free of mechanic's, material supplier's or other liens for any work done, labor performed or materials furnished therein by or for Lessee, and Lessee shall defend, indemnify and hold Lessor, its officials, employees and agents harmless from and against all claims, liens, demands, causes of action, liability, loss, cost and expense (including reasonable attorney's fees) of whatever kind for any such work done, labor performed or materials furnished.

13. No Utilities. Lessor shall not provide any utilities to the Premises. Lessee shall arrange and pay for the installation and use of all utilities of whatsoever kind to the Premises.

14. Maintenance.

A. Lessee shall, at Lessee's sole cost and to the satisfaction of Lessor, maintain the Premises and all improvements thereon in good condition, free from rodents, weeds, noxious plants, wild growth and graffiti, in substantial repair, in a safe and sanitary condition, and in compliance with all applicable laws and regulations and shall promptly repair any damage caused by Lessee. If Lessee fails to maintain the Premises as required herein, Lessor may notify Lessee of said failure. If Lessee fails to correct the situation within thirty (30) days after notice or such longer period as may be established by Lessor, Lessor may make the necessary correction and the cost thereof, including but not limited to the cost of administration, and labor, materials, equipment, shall be paid by Lessee within thirty (30) days after receipt of a statement of said cost from Lessor. If said statement is not timely paid, Lessor may, at its option, choose any remedy available herein or by law, including the termination of this Lease. Lessee hereby waives to the extent permitted by law any right to make repairs at the expense of Lessor or to vacate the Premises in lieu thereof as may be provided by law.

B. Lessor shall have no duty to maintain or repair the Premises or any of Lessee's improvements, including the antenna towers on the Premises.

15. Taxes. Lessee acknowledges that this Lease may create a possessory interest subject to property taxation and that Lessee may be liable for payment of taxes levied on such interest. Lessee shall promptly pay, prior to delinquency, all taxes, assessments and other governmental fees that may be lawfully levied against the Premises and any improvements or personal property located on the Premises and on any possessory interest created by this Lease, and provide proof of payment to Lessor on demand.

16. Insurance. Concurrent with the execution of this Lease, Lessee shall procure and maintain, at its cost, during the initial and any extended or Renewal Term of this Lease from an insurer admitted in California or having a minimum rating of or equivalent to A: VII in *Best's Insurance Guide*:

A. Comprehensive General Liability insurance with a combined single limit of at least Five Million Dollars (\$5,000,000) for each occurrence. Lessor, its officials, employees and agents shall

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be covered as additional insureds with respect to liability arising from activities performed by or on behalf of Lessee. Said insurance shall be primary insurance with respect to Lessor and shall contain a cross liability endorsement.

B. "All Risk" property insurance in an amount sufficient to cover the full replacement value of Lessee's personal property, improvements and equipment on the Premises.

C. Upon the execution of this Lease, Lessee shall deliver to Lessor certificates of insurance with original endorsements evidencing the coverage required by this Lease. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. Lessor reserves the right to require complete certified copies of all policies at any time.

D. Said insurance shall contain an endorsement requiring thirty (30) days prior written notice from insurer to Lessor before cancellation or change of coverage.

E. Said insurance may provide for such deductibles or self-insured retention as may be acceptable to the City's Risk Manager or designee. In the event such insurance does provide for deductibles or self-insured retention, Lessee agrees that it will fully protect Lessor its officials and employees in the same manner as these interests would have been protected had a policy of commercial insurance been in effect. With respect to damage to property, Lessor and Lessee hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

F. The procuring of insurance shall not be construed as a limitation on Lessor's liability or as full performance on Lessee's part of the indemnification provision of this Lease. Lessee understands and agrees that, notwithstanding any insurance, Lessee's obligation to defend and indemnify Lessor, its officials and employees hereunder is for the full amount of any damage, loss cost or expense.

G. Any modification or waiver of these insurance requirements shall only be made with the written approval of the Lessor's Risk Manager or designee.

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17. Removal of Improvements. On the expiration or sooner termination of this Lease, Lessee at Lessee's sole cost shall have the right to remove Lessee's equipment or temporary improvements placed in or on the Premises by Lessee by giving notice of its intention to do so to Lessor and by removing same within forty-five (45) days after expiration or sooner termination of this Lease. Lessor may treat any such equipment or improvements as abandoned if Lessee fails to timely remove them and, in such event, (a) Lessor shall be deemed owner of them without accounting to Lessee, or (b) Lessor may cause their removal at Lessee's cost.

18. Relocation. Lessee agrees that nothing contained in this Lease shall create any right in Lessee for any relocation payment or assistance pursuant to the provisions of Title 1, Division 7, Chapter 16 of the California Government Code from Lessor on account of the expiration or sooner termination of this Lease.

19. Notice. Any notice required hereunder shall be in writing and personally delivered or deposited in the U.S. Postal Service, registered or certified, return receipt, postage prepaid, to the address of the respective parties set forth below:

LESSOR:

LESSEE:

Director of Finance & Information Technology  
City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401

Notice shall be deemed effective on the date shown on the return receipt or on the date personal delivery is made, whichever first occurs. If delivery is refused, the date of deposit of the copy in the mail shall be deemed the date of notice. Change of address shall be given as provided herein for notices.

20. Hazardous Materials and Waste.

A. Lessee shall comply with all applicable laws regarding the use, storage and disposal of hazardous materials on the Premises. Lessee shall comply with California Health and Safety

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Code Section 25359.7 or its successor regarding notice to Lessor on discovery by Lessee of the presence or suspected presence of any hazardous substance on the Premises.

B. Lessee shall not bring any hazardous materials onto the Premises except for those contained in its back-up power batteries and common materials used in telecommunications operations, e.g., cleaning solvents. Lessee shall treat all hazardous materials brought onto the Premises by it in accordance with all federal, state and local laws and regulations.

C. Lessee shall specify any proposed generator usage and enter into a shared use agreement with Verizon Wireless prior to signing lease agreement with the City.

D. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, or hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil, or any fraction or derivative thereof), or underground storage tanks are located on or near the Premises.

21. Indemnity. Lessee shall defend, protect, indemnify and hold harmless Lessor, its officials, employees and agents from all claims, demands, damages, causes of action, losses, liability, costs or expenses, including reasonable attorney's fees, of any kind or nature whatsoever (except those resulting from Lessor's sole negligence or willful misconduct) which Lessor, its officials, employees and agents may incur for injury to or death of persons or damage to or loss of property occurring in, on or about the Premises arising from or relating to: the condition of the Premises (other than conditions existing prior to Lessee's occupancy of the Premises); the alleged acts or omissions of Lessee, any parent, subsidiary, affiliate or partnership in which any such entity participates, Lessee's officers, employees or agents; the occupancy, use or misuse of the Premises by Lessee, any parent, subsidiary, affiliate or partnership in which any such entity participates, Lessee's officers, employees or agents; or any breach of this Lease.

22. Assignment and Subletting. Lessee shall not assign or transfer this Lease or any interest herein, (collectively referred to as "transfer") without the prior written consent of Lessor, which shall not

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be unreasonably withheld or delayed. To obtain Lessor's consent to a proposed assignment or transfer, Lessee shall meet the following requirements and Lessee's failure to meet any requirement shall allow Lessor to withhold consent:

A. Lessee shall notify Lessor at least sixty (60) days prior to the date when Lessee desires the transfer to take effect ("Transfer Date") which notice shall contain the name, address and telephone number of the proposed transferee; the nature of the proposed transferee's business and details of its business experience.

B. Lessor shall notify Lessee at least thirty days (30) days prior to the Transfer Date whether Lessor approves or disapproves of the proposed transfer.

C. Any approved transferee shall assume and be deemed to have assumed this Lease and shall be jointly and severally liable with Lessee for the payment of rent and performance of the terms, covenants, and conditions of this Lease. No approved transfer shall be binding on Lessor until such transferee shall deliver to Lessor a counterpart of the transfer agreement with contains a covenant of assumption by transferee but the failure or refusal to execute or deliver such instrument shall not release transferee from its liability as stated herein.

D. The consent of Lessor to any transfer shall not relieve Lessee of the obligation to obtain such consent to any further transfer. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy (either voluntary or involuntary), or receivership. In the event of the transfer without the prior written consent of Lessor, such transfer shall be voidable at Lessor's election and, if voided by Lessor, shall convey no interest. Any transfer without Lessor's consent shall constitute a default of this Lease.

E. To obtain Lessor's consent to a sublease, Lessee shall meet the following requirements and Lessee's failure to meet any requirement shall allow Lessor to withhold consent:

1) The Lessee must pay to Lessor the same amount of Annual Rent on the sublease tenant's behalf as the Lessee ("Additional Annual Rent"). While the Lessee may require the

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sublease tenant to pay this amount as part of their sublease agreement with the Lessee, payment of the Additional Annual Rent is the sole responsibility of the Lessee, and is subject to the same terms, conditions and remedies as the Annual Rent.

2) Lessee shall notify Lessor at least sixty (60) days prior to the date when Lessee desires the sublease to take effect (“Sublease Date”), which notice shall contain the name, address and telephone number of the proposed sublease tenant; the nature of the proposed sublease tenant’s business and details of its business experience. The first year of Additional Annual Rent shall be paid prior to the Sublease date and will be prorated to the Lessee’s Annual Rent payment due date; and shall be due annually thereafter with the Annual Rent.

3) Lessor and Lessee agree (by way of example and without limitation) that it shall be reasonable for Lessor to withhold its consent if any of the following exist or may exist: the proposed transferee’s use of the Premises conflicts with or is inconsistent with the use of the Premises stated herein; the Lessee is in default under this Lease at the time the request for sublease is made and has not cured such default, if the same can be cured, prior to ten (10) business days prior to the Sublease Date.

4) The sublease tenant is subject the same terms and conditions of this Agreement as the Lessee.

5) Lessor shall notify Lessee at least fifteen (15) days prior to the sublease date whether Lessor approves or disapproves of the proposed sublease.

23. No Permits. Lessee shall not grant any rights-of-way, easements, franchises or permits in, on or across the Premises.

24. Encumbrances. Lessee shall take the Premises subject to any and all existing easements and other encumbrances.

25. Reservations. Lessor reserves the right to grant franchises, easements, rights-of-way or permits for pipeline purposes which will not interfere with Lessee’s use of the Premises.

26. Default. The occurrence of any of the following acts shall constitute a default by Lessee:

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A. Failure to pay Annual Rent or Additional Annual Rent when due where such failure shall continue for a period of ten (10) days after Lessee's receipt of written notice from Lessor.

B. Failure to perform any of the terms, covenants or conditions of this Lease if said failure is not cured within thirty (30) days after Lessee's receipt of written notice from Lessor of said failure. If the default cannot reasonably be cured in thirty (30) days after receipt of such notice, Lessee shall not be in default if Lessee begins to cure within the thirty-day period and diligently proceeds to cure to completion. Lessor's notice shall describe the default and shall demand that Lessor perform or quit the Premises. No such notice shall be deemed a forfeiture or termination of the Lease unless Lessor so elects in the notice.

C. Any attempted assignment, transfer or sublease except as permitted in Section 22 hereof.

D. Failure to maintain all necessary permits and business licenses required by the City in its municipal or regulatory capacity or failure to pay any fees for permits or licenses to the City when due;

E. Failure to report or pay to the City all applicable sales taxes, transient occupancy taxes, business taxes, utility taxes or other excise taxes, when due. Subject to the terms of this Section, if Lessee does not comply with each term, covenant and condition of this Lease or if a default occurs, then Lessor may terminate this Lease and Lessor may then enter the Premises and take possession thereof provided, however, that these remedies are not exclusive but cumulative to other remedies provided by law in the event of Lessee's default, and the exercise by Lessor of one or more rights and remedies shall not preclude the Lessor's exercise of additional or different remedies for the same or any other default by Lessee.

F. Failure to perform any of the terms, covenants or conditions of this Lease if said failure is not cured within thirty (30) days after Lessee notifies Lessor of said failure shall constitute a default by Lessor of this Lease. If the default cannot reasonably be cured in thirty (30) days after receipt

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of such notice, Lessor shall not be in default if Lessor begins to cure within the thirty (30) day period and diligently proceeds to cure to completion.

27. Right of Entry.

A. In the event of an emergency which poses an immediate threat of harm or damage to persons or property, Lessor may enter the Premises and take such actions as are required to protect persons or property from such immediate threat of harm or damage, provided that promptly after such emergency entry into the Premises (and in no event later than twenty-four (24) hours) Lessor gives telephonic and written notice to Lessee of Lessor's entry into the Premises. In addition to Lessor's rights under the immediately preceding sentence, Lessor shall have the right, upon forty-eight (48) hours prior telephonic notification to Lessee (which notification shall specify the date and time at which Lessor seeks to enter the Premises), to enter the Premises to determine whether or not Lessee is complying with this Lease and to serve, post or keep posted any notice. Except in the event of an emergency, Lessor agrees that it shall not enter the Premises without a representative of Lessee being present, and Lessee agrees to make its representative promptly and readily available to accompany Lessor on the date and at the time given in Lessor's telephonic notice. If Lessee fails to make its representative available on the date and at the time given in Lessor's telephonic notice or at a mutually agreeable time, then Lessor may enter the Premises accompanied by a peace officer.

B. Lessee shall install a lock box system on the Premises and give the City access to the lock box in order to allow the City to inspect the Premises pursuant to Paragraph A above.

28. Signs. Lessee shall not place, affix, maintain or permit any sign, advertisement, name, insignia, logo, descriptive material or similar item (collectively "sign") on the Premises without the prior written approval of Lessor. Any approved sign shall be maintained by Lessee in good condition at all times. Lessor may remove any sign not approved by Lessor at Lessee's cost. The cost of removal shall be additional rent.

29. Condemnation. If the whole of the Premises shall be taken by any public or quasi-public

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authority under the power of eminent domain, then this Lease shall terminate. If any part of the Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part taken, as of the day possession (of that part) is required for any public purpose, and on or before that day Lessee shall elect in writing either to terminate this Lease or to continue in possession of the remainder of the Premises provided, however, that rent shall only be reduced in proportion to the amount of the Premises taken if Lessee is unable to operate at the same level after the condemnation as before the condemnation. All damages awarded for any taking shall belong to Lessor, whether such damages be awarded as compensation for diminution in value to the leasehold or to the fee provided, however, that Lessor shall not be entitled to any portion of the award made for loss of Lessee's business or relocation expenses.

30. Nuisance. Lessee shall not do or permit to be done in or on the Premises any act, which may be an unreasonable nuisance, annoyance or inconvenience to Lessor, Lessor's tenants on or occupants of adjoining property, or to the neighborhood.

31. Exculpation. Except as expressly provided herein, Lessor shall not be liable to Lessee for any damages to Lessee or Lessee's property from any cause. To the extent permitted by law, Lessee waives all claims against Lessor for damage or injury to persons or property arising or alleged to have arisen from any cause whatsoever, except Lessor's sole negligence or willful misconduct or Lessor's breach of its obligations hereunder.

32. Waiver of Rights. The failure or delay of either party to insist on strict enforcement of any term, covenant, or condition herein shall not be deemed a waiver of any right or remedy that such party may have and shall not be deemed a waiver of any subsequent or other breach of any term, covenant, or condition herein. The receipt and acceptance by Lessor of delinquent rent shall not constitute a waiver of any other default but shall only constitute a waiver of timely payment for the particular rent payment involved. Any waiver by either party of any default or breach shall be in writing. Either party's consent to or approval of any act by the other party requiring a party's consent or approval shall not be deemed to waive such party's consent or approval of any subsequent act of the other party.

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33. Partial Invalidity. If any term, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect.

34. Successors in Interest. This Lease shall be binding on and inure to the benefit of the parties and their successors, heirs, personal representatives, approved transferees and assignees, and all of the parties hereto shall be jointly and severally liable hereunder.

35. Right to Re-Enter. Lessor acknowledges that Lessee's use of the Premises includes proprietary trade secrets. Lessor shall have no right whatsoever to enter the Premises except as provided in Paragraph 27.A. above, without Lessee's written consent which Lessee shall not unreasonably withhold. Lessee shall peaceably deliver possession of the Premises to Lessor on the effective date of termination or expiration of this Lease. On giving notice of termination to Lessee, Lessor shall have the right to re-enter and take possession of the Premises on the termination or expiration date without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Premises by Lessor shall in no way alter or diminish any obligation of Lessee under the Lease and shall not constitute an acceptance or surrender. Lessee waives any and all right of redemption under any existing or future law, in the event of eviction from the Premises and in the event Lessor re-enters and takes possession. Lessee agrees that should the manner and method used by Lessor in re-entering or taking possession after breach by Lessee gives Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee shall be entitled in any such action shall be One Dollar (\$1.00). Lessee agrees that this Section may be filed in any such action and that when filed it shall be a stipulation by Lessee fixing the total damages to which Lessee is entitled in such action.

36. Holding Over. If Lessee holds over and remains in possession of the Premises after the expiration of the Lease, such holding over shall be construed as a tenancy from month to month on the same terms, covenants, and conditions herein, except that monthly rent shall be one-twelfth (1/12) of one

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hundred twenty-five percent (125%) of the annual rent then in effect. Nothing in this Section shall be construed as consent by Lessor to any holding over by Lessee.

37. Time. Time is of the essence in this Lease and every provision hereof.

38. Attorney's Fees. In any action or proceeding relating to this Lease, the prevailing party shall be entitled to its costs, including reasonable attorney's fees and court costs.

39. Integration and Amendments. This Lease represents and constitutes the entire understanding between the parties and supersedes all other agreements and communication between the parties, oral or written, concerning the subject matter herein. This Lease shall not be modified except in writing duly signed by the parties and referring to this Lease.

40. Recordation. Concurrently with the execution of this Lease, Lessor shall execute before a notary and deliver to Lessee for recording a "Memorandum of Lease" substantially in the form of Exhibit "C" attached hereto and by this reference incorporated herein (the "Memorandum"). Lessee may record the Memorandum and shall pay any fees or taxes applicable to or arising from said recordation. Upon expiration or sooner termination of this Lease, Lessee shall, at its sole cost, immediately record a Quitclaim Deed with respect to its interest under this Lease.

41. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

42. Captions. The various headings and numbers herein and the grouping of the terms hereof into separate sections, paragraphs and clauses are for convenience only and shall not be considered a part hereof, and shall have no effect on the construction or interpretation of this Lease.

43. Abandoned Property. The vacating or abandonment of the Premises by Lessee shall include but not be limited to the failure of Lessee to occupy the Premises for a continuous period of forty-five (45) days or more while not paying rent. If Lessee abandons the Premises, title to any personal property belonging to Lessee and left on the Premises forty-five (45) days after such abandonment shall be deemed to have been transferred to Lessor. Lessor shall thereafter have the right to remove and to dispose of said

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property without liability to lessee or to any person claiming under Lessee, and shall have no duty to account therefor.

44. Compliance with the Law. Lessee shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities having jurisdiction over the Premises and business thereon.

45. Quiet Enjoyment. Lessor covenants that, if Lessee performs the terms, covenants and conditions of this Lease, Lessee shall peaceably and quietly hold and enjoy the Premises.

46. Lessor's Representation of Authority. Lessor represents that it has title to the Premises and full authority to execute this Lease and to grant the easements and access to the Premises. Lessor further represents that there are no undisclosed liens, judgments, impediments or exceptions of title on the Premises that would affect this Lease.

47. Non-Interference Provision. Lessor will use its best efforts to provide Lessee with notice of any applications received from any other communications companies wishing to utilize any part of Santa Rosa Park. Further, Lessor will use its best efforts to not lease property in Santa Rosa Park to other communication companies that might interfere with Lessee's use of the Premises. In the event any other communication company does, in fact, interfere with Lessee's use of the Premises, the same shall not be deemed a breach of this Lease and Lessee may terminate this Lease as provided in Paragraph 5.D.

IN WITNESS WHEREOF, the parties have executed this Lease with all of the formalities required by law as of the date first above written.

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LESSOR:

LESSEE:

CITY OF SAN LUIS OBISPO, a  
Municipal Corporation

By: \_\_\_\_\_  
David F. Romero, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Elaina Cano, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Christine Dietrick, City Attorney

**Exhibit A**

**LEGAL DESCRIPTION OF THE PROPERTY AND PREMISES**

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All that real property located in the State of California, County of San Luis Obispo, described as follows:

*[Note: The legal description will be prepared at a later date prior to execution of the lease.]*

**Exhibit B  
DESCRIPTION OF THE PROJECT**

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*[Note: The detailed project description will be prepared at a later date prior to execution of the lease.]*

**Exhibit C  
MEMORANDUM OF LEASE**

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**RECORDING REQUESTED BY:**

**WHEN RECORDED, RETURN TO:**

---

***MEMORANDUM OF LEASE***

This MEMORANDUM OF LEASE (“Memorandum”) dated as of \_\_\_\_\_, 2010, is between the CITY OF SAN LUIS OBISPO, a municipal corporation and charter city (“Lessor”) and \_\_\_\_\_.

***RECITALS***

WHEREAS, Lessor and Lessee have executed that certain Telecommunications Facility Lease at Santa Rosa Park (“Lease”) dated as of \_\_\_\_\_, 2010, covering certain premises (the “Premises”) situated on a portion of that certain real property located in the County of San Luis Obispo, State of California, and more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference; and

WHEREAS, Lessor and Lessee desire to record notice of the Lease in the Official Records of San Luis Obispo County, California;

NOW, THEREFORE, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. Demise. Lessor has leased the Premises to Lessee (together with access rights), and Lessee has hired the Premises from Lessor, subject to the terms, covenants and conditions contained in the Lease.

2. Expiration Date. The term of the Lease (“Term”) is scheduled to commence on or before \_\_\_\_\_ and shall expire five (5) years thereafter, subject to Lessee’s option to extend the Term pursuant to Section 3 of the Lease for three (3) additional terms of five (5) years each.

3. Lease Controlling. This Memorandum is solely for the purpose of giving constructive notice of the Lease. In the event of conflict between the terms of the Lease and this Memorandum, the terms of the Lease shall control.

*IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Lease as of the date and year first written above.*

**Request for Proposals: Telecommunications Facilities Lease at Santa Rosa Park**

LESSOR

LESSEE

By:  
Name:  
Title:

By:  
Name:  
Title:

**NOTARIZED SIGNATURES**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_,  
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.

\_\_\_\_\_  
(Signature of Notary Public)

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_,  
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.

\_\_\_\_\_  
(Signature of Notary Public)

## Section E WIRELESS TELECOMMUNICATION DEVELOPMENT STANDARDS

Table 9 – Uses Allowed by Zone

TRANSPORTATION & COMMUNICATIONS	Permit Requirement by Zoning District																Specific use Regulations	
	AG	C/OS	R1	R2	R3	R4	PF	O (1)	C-N	C-C	C-D	C-R	C-T	C-S	M	BP		
Land Use																		
Antennas and telecommunications facilities	D	D						D	D		D	D	D	D	D	D	D	17.16.120

**Key:**

D = Director’s approval required

**17.16.120 Wireless telecommunication facilities.**

**A. Purpose**

To establish standards for the development, siting and installation of wireless telecommunications facilities; to protect and promote public health, safety, and welfare; and to preserve view corridors and avoiding adverse visual and environmental impacts. These standards are not intended to be all-inclusive. Projects may be subject to additional standards deemed appropriate through architectural review and use permit processing to address site-specific conditions.

**B. Definitions.**

1. Wireless telecommunications facilities consist of commercial wireless communications systems, including but not limited to: cellular, PCS, paging, broadband, data transfer, and any other type of technology that fosters wireless communication through the use of portable electronic devices. A facility includes all supporting structures and associated equipment.
2. Co-location is the practice of two or more wireless telecommunication service providers sharing one support structure or building for the location of their antennas and equipment.
3. Stealthing means improvements or treatments added to a wireless telecommunications facility which mask or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it effectively unnoticeable to the casual observer.

**C. Exempt facilities.**

The following wireless telecommunication facilities are exempt from the requirements of this section:

1. Government-owned communications facilities used primarily to protect public health, welfare, and safety.
2. Facilities operated by providers of emergency medical services, including hospital, ambulance, and medical air transportation services, for use in the provision of those services.
3. Satellite dish antennas for residential and commercial use, solely for the use of the occupants of the site, subject to compliance with development standards set forth in Section 17.16.100 et al of the zoning ordinance.
4. Any facility specifically exempted under federal or state law.

**D. Planning Applications and approvals required.**

1. Installation of a new wireless telecommunication or modification of an existing installation shall require administrative use permit approval and architectural review.
2. The co-location of a new wireless telecommunication with an existing approved installation shall only require architectural review.

## Request for Proposals: Telecommunications Lease at Santa Rosa Park

3. The applicant shall submit application materials and fees as required by the Community Development Department.

### **E. Building permit required.**

Wireless communications facilities shall not be constructed, installed or modified prior to obtaining a City building permit.

### **F. Site development and performance standards.**

1. **Setbacks.** All facility towers and accessory structures shall comply with the setback requirements of the applicable zoning district.
2. **Height.** The height of any antenna or support equipment shall be determined as part of the use permit on a case by case basis. All facilities shall be designed to the minimum necessary functional height.
3. **Site Access.** Telecommunication facilities should use existing roads and parking whenever possible. New and existing access roads and parking shall be improved and surfaced where necessary to the satisfaction of the Community Development Director.
4. **Aesthetics and Visibility.** Facilities shall be creatively designed to minimize the visual impact to the greatest extent possible by means of placement, screening and camouflage. The applicant shall use the smallest and least visible antennas possible to accomplish the coverage objectives. Each installation shall be designed to blend into its surroundings so that the antenna(s) and equipment are not apparent to the casual observer.
  - a. Building mounted facilities shall appear as an integral part of the structure. Equipment and antennas shall be compatible and in scale with existing architectural elements, building materials and site characteristics. Wall mounted antennas shall be integrated architecturally with the style and character of the structure. If possible, antennas and equipment shall be located entirely within an existing or newly created architectural feature so as to be effectively unnoticeable.
  - b. Ground mounted support equipment shall be undergrounded or otherwise screened from view so as to be effectively unnoticeable.
  - c. All connections and conduits between the base of the antenna(s) and support equipment shall be undergrounded. Connections and conduit above ground shall be fully enclosed to the satisfaction of the Community Development Director. Electrical and telephone service to the support equipment shall be undergrounded.
  - d. Ground mounted antennas, poles, structures, equipment, or other parts of a telecommunications facility, which would extend above a ridgeline so as to silhouette against the sky shall be discouraged. Where allowed, they shall be designed to be indistinguishable from the natural surroundings.
5. **Lighting.** All telecommunication facilities, not otherwise required to have lighting pursuant to Federal Aviation Administration rules, shall be unlit, except when authorized personnel are actually present at night, and except for exempt facilities.
6. **Historic Buildings.** Any wireless facility located on or adjacent to a historic building or site shall be designed to ensure consistency with the Secretary of Interior standards for remodeling and rehabilitation.
7. **Equipment Upgrades.** It shall be the responsibility of the owner/operator of a telecommunications facility to provide the City with a notice of intent to modify site equipment in any way. At the time of modification, co-location, or upgrade of facilities, existing equipment shall be replaced with equipment of equal or greater technical capacity and modified to reduce aesthetic impacts by reducing the size of the facility or introducing camouflaging techniques to the satisfaction of the Community Development Director. Unused or obsolete equipment or towers shall be removed from the site within 90 days after their use has ceased.

## Request for Proposals: Telecommunications Lease at Santa Rosa Park

8. **Number of facilities per site.** The City shall retain the authority to limit the number of antennas with related equipment and providers to be located at any site and adjacent sites in order to prevent negative visual impacts associated with multiple facilities.
9. **Noise.** Each facility shall be operated in a manner that minimizes any possible disruption caused by noise to people working and living in the vicinity. At no time shall equipment noise from any source exceed an exterior noise level of 55 dB at the property line or within 20 feet of such equipment, whichever is less. This requirement may be modified at the discretion of the Community Development Director where typical ambient noise levels exceed 55 dB. Outdoor noise producing construction activities shall take place only on weekdays between the hours of 8:00 am and 5:00 pm unless a different schedule is approved as part of the use permit.
10. **Backup Generators.** Any facility utilizing temporary backup generators shall be required to meet or exceed Air Pollution Control District Standards. All generators shall be fitted with approved air pollution control devices. Projects that propose to include backup generators shall require review and approval from the Air Pollution Control district. Project plans shall indicate location, size, horsepower, and type of fuel used for any proposed generator. Generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:00 am and 5:00 pm.
11. **Biological Impacts.** Wireless telecommunication facility shall minimize potential impacts to biological resources to the greatest extent possible.
12. **Radio Interference.** Interference with municipal radio communication is prohibited. Any telecommunication facility that the City has reason to believe is interfering with municipal radio communication shall cease operation immediately upon notice from the City, and shall be subject to use permit review and possible revocation. Testing shall be done prior to any permanent installation and frequencies shall be monitored at regular intervals after installation established by the use permit, at the expense of the facility owner/operator.
13. **Airport Operations.** Wireless communications facilities shall not be sited in locations where they will interfere with the operation of the San Luis Obispo Airport. Wireless towers and related facilities within the Airport Planning Area shall be referred to the Airport Manager or the Airport Land Use Commission for a determination of consistency with airport area standards.
14. **Radio Frequencies and Electromagnetic Exposure.**
  - a. Wireless telecommunications facilities operating alone or in conjunction with other telecommunications facilities shall not produce radio frequency radiation in excess of the standards for permissible human exposure as adopted by the Federal Communications Commission (FCC). Applications for facilities shall include a radio frequency radiation (RFR) report that measures the predicted levels of RF radiation emitted by the proposed facility. The radio frequency radiation report shall compare proposed project levels to levels allowed by the FCC and shall show output of the proposed facility in combination with other facilities located or proposed in the vicinity.
  - b. The City may require one or more post-construction RFR reports as a condition of project approval, to verify that the actual levels of RFR emitted by the approved facilities, operating alone or in combination with other approved facilities, substantially conform to the pre-approval RFR report and do not exceed current standards for permissible human exposure to RFR as adopted by the FCC.
15. **Signs.** Explanatory warning signs shall be posted at all access points to cellular telecommunication facilities in compliance with the American National Standards Institute (ANSI) C95.2 color, symbol, and content conventions.
16. **Nuisance.** Facility generators, mechanical equipment, construction, testing and maintenance shall be operated or performed in such a manner that no nuisance results. At the discretion of the Director, upon receipt of written complaints, the use permit allowing a telecommunications facility may be scheduled for public review. At the hearing, conditions of approval may be added, deleted, or modified, or the use permit may be revoked.

## Request for Proposals: Telecommunications Lease at Santa Rosa Park

**17. Interference with Public Services and Facilities.** Telecommunication facilities within public parks shall not interfere with park operations or limit public use of park facilities. Installations in conjunction with other public facilities shall be held to a similar standard.

**18. City inspection.** The City shall have the right to access facilities after 24 hours written or verbal notice.

### **G. Abandonment.**

It shall be the responsibility of the owner/operator of a telecommunications facility to provide the City with a notice of intent to vacate the site a minimum of thirty (30) days prior to ceasing operation. Any wireless telecommunication facility that is not operated for a continuous period of ninety (90) days shall be removed within ninety (90) days of the date upon which the operation ceased.

### **H. Revocation of a Permit.**

Wireless telecommunication service providers shall fully comply with all conditions related to any permit or approval granted under this section. Failure to comply with any condition shall constitute grounds for revocation. If a condition is not remedied within a reasonable period, the Community Development Director may schedule a public hearing before the Hearing Officer to consider revocation of the permit. (Ord. 1409 – 2001 Series)

## **Section F ARCHITECTURAL REVIEW STANDARDS AND CONDITIONS**

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***Provided for background information only – these conditions have been met and must continue to be met or the project must undergo architectural review again.***

### **Findings (from the letter to the original applicant, dated October 8, 2002):**

1. The project complies with the site development and performance standards of the City's wireless telecommunication facilities ordinance.
2. The antennas can be considered camouflaged.
3. Although the project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made or mitigation measures added and agreed to by the project proponent.

### **Conditions (from the letter to the original applicant, dated October 8, 2002):**

1. Option A, light pole with lights on top and exposed antennas below, shall be utilized.
2. The project shall be developed in substantial compliance with the plans approved by the ARC. All ARC conditions shall be listed on a sheet in the building plans. Any changes to lighting or parking lot designs shall be subject to the review and approval of the Community Development Director.
3. All existing public utilities shall be showing in detail on these plans. All existing private park facilities shall be detailed on these plans. Underground utilities, including but not limited to, gas piping, phone lines, electrical service, irrigation controller circuits, remote sending circuits, landscape irrigation, domestic waster services, sewer laterals, water mains, and sewer mains shall be shown in detail to the approval of the Parks Maintenance Supervisor.
4. All-weather access shall be maintained to all sanitary sewer manholes. No permanent structures shall be constructed within three meters of the existing sewer main. If conduit will be installed with directional drilling techniques, contractor shall be responsible for video inspecting all sewer mains and laterals in the vicinity and immediately repair any damaged pipes and manholes. All underground conduits shall maintain two meter minimum horizontal separation from the sewer. Conduit crossing any sewer main shall maintain 0.5 meter minimum separation.
5. An accessible path of travel shall be provided to the existing facilities that are now served by the parking lot being removed. A new four foot wide path with an all-weather surface such as concrete or asphalt shall be installed between the ball field facilities (restrooms, baseball play field, bleachers), the skate park / skate rink, the existing path to Murray Street, the new buildings and the remaining existing parking lot. Path shall comply with requirements for surface material, cross slope, slope in the direction of travel and any other applicable sections for walkways (see UBC 1133B.7.)

## **Request for Proposals: Telecommunications Lease at Santa Rosa Park**

6. Improvement plans shall include detailed lighting specifications for the new light poles. These fixtures may need to be shielded to minimize spill and glare while at the same time achieving the lighting needs of the ball field. A note shall be included on the improvements plans that “After installation, the new ball field lights may need to be modified or shielded if the Community Development Director determines that they emit excessive glare.
7. Trees shall be added between Santa Rosa Street and the main parking lot, adjacent to the parking lot closest to the ball fields where possible, and behind the new antenna, light pole closest to the skate park. Acceptable tree varieties shall be those from the City’s street tree list and shall exclude eucalyptus and pine varieties.

## **Section G PLANNING COMMISSION USE PERMIT**

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***Provided for background information only – these are the conditions set for Application No. U 11-02 allowing installation of a wireless telecommunication facility at 190 Santa Rosa Street, dated October 23, 2002. These conditions have been met and must continue to be met or the project must obtain a revised use permit.***

### **Findings:**

1. The project complies with the site development and performance standards of the City's wireless telecommunication facilities ordinance.
2. The proposal could be established and maintained without jeopardy to persons or property within or adjacent to the proposed site and without damage to the resources of the site and its surroundings subject to the conditions of the Architectural Review Commission in that the proposed antennas can be considered camouflaged, as the casual observer would not usually suspect a ball field light to be a cell tower. In addition, the telecommunications site will comply with FCC regulations regarding radio frequency transmissions and potential light impacts to the neighborhood would not be in excess of existing conditions.
3. Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because mitigation measures have been added and agreed to by the project proponent.

### **Aesthetics**

1. Screen outdoor mechanical equipment from on-site and off-site views to the satisfaction of the Architectural Review Commission.

Monitoring Program: The Architectural Review Commission will ensure that any outdoor and roof-mounted mechanical equipment will be screened from on-site and off-site views. Building plans shall be in substantial compliance with plans approved by the Architectural Review Commission.

2. The new ball field lights shall be directed downward as indicated in the project plans to minimize light and glare into the adjacent neighborhood. Lighting of the skate park and roller rink shall have maximum illumination levels of 30 foot-candles within those respective activity areas. Park policy shall be that lights are off at 10:00 P.M.

Monitoring Program: The Architectural Review Commission will ensure compliance through the Architectural Review process and Building plans shall be in substantial compliance with plans approved by the Architectural Review Commission.



## REFERENCES

Number of years engaged in providing the services included within the scope of the specifications under the present business name:\_\_\_\_\_.

Describe fully the last three contracts performed or leases entered into by your firm that demonstrates your ability to successfully execute the terms and conditions of the “base” lease agreement included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

### Reference No. 1

Customer Name	
Contact Individual	
Telephone & FAX number	
Street Address	
City, State, Zip Code	
Contract or Lease Description	

### Reference No. 2

Customer Name	
Contact Individual	
Telephone & FAX number	
Street Address	
City, State, Zip Code	
Contract or Lease Description	

### Reference No. 3

Customer Name	
Contact Individual	
Telephone & FAX number	
Street Address	
City, State, Zip Code	
Contract or Lease Description	

