Project:

AT&T at Rincon Park

APN:

001-220-100 (Portion)

Folio:

003017

Agent:

JJS

LEASE AGREEMENT AT&T WIRELESS at Rincon Park

THIS LEASE AGREEMENT is made by and between the

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY,"

and

Santa Barbara Cellular Systems, Ltd., a Georgia limited partnership, hereinafter referred to as "LESSEE,"

with reference to the following:

WHEREAS, COUNTY is the owner of that certain real property located in the County of Santa Barbara commonly known as Rincon Park (hereinafter "County Park"), which property is located at 100 South Bates Road in Carpinteria, California, and is more particularly described as Assessor's Parcel Number 001-220-100 which property is used for the purposes of a county park (hereinafter "Property") and is shown as the diagonally slashed area of Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, LESSEE currently operates and maintains a wireless communication network inside and outside the boundaries of Santa Barbara County; and

WHEREAS, LESSEE has been operating a telecommunications facility on a portion of said Property since 1996; and

WHEREAS, LESSEE's current lease agreement expired on October 31, 2016; and

WHEREAS, LESSEE has remained on the Site as a holdover tenant; and

WHEREAS, LESSEE desires to enter into a new lease agreement (hereinafter "Agreement"), with the COUNTY to continue occupying and using a portion of said Property for a wireless communication facility subject to the terms and conditions contained herein.

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

- 1. <u>ADMINISTRATION AND ENFORCEMENT</u>: The provisions of this Agreement shall be administered and enforced for the COUNTY by the COUNTY'S General Services Department.
- 2. **LEASED AREA:** COUNTY hereby leases to LESSEE and LESSEE hereby takes from COUNTY the specific portion of the Property currently occupied by LESSEE'S existing wireless communication facility (hereinafter "Site") as shown on Exhibit "B", attached hereto and incorporated herein by reference.
- ACCESS TO THE SITE: LESSEE shall be allowed to access the Site through the County Park during normal operating hours. LESSEE shall only access the Site on the access road marked on the architectural plans attached hereto as Exhibit "C" and by reference made a part hereof. For any required access after the County Park's normal operating hours (emergency situations and equipment failure excepted), LESSEE shall give reasonable notice, which shall be defined as five (5) business days, to the COUNTY's Real Property Manager prior to gaining access to the Site; provided, however, in the event of an emergency or equipment failure, LESSEE may access the Site and shall endeavor to notify the COUNTY's Real Property Manager at (805) 568-3070 prior to accessing the Site and in the event LESSEE is unable to reach the COUNTY's Real Property Manager, LESSEE shall notify COUNTY of such access within twenty-four (24) hours after said access. COUNTY shall not be responsible for maintaining the access road to the Site.

COUNTY shall not be liable to LESSEE for lack of access to the Site as a result of natural causes. However, in the event that the Site becomes inaccessible as a result of natural causes, COUNTY shall to the extent necessary cooperate with LESSEE to restore access in a timely fashion.

In the event COUNTY implements security programs and policies as part of County's governing ordinance, LESSEE shall comply with such reasonable security programs and policies.

4. PURPOSE AND USE: LESSEE shall use the Site to construct, maintain, repair, alter, replace, upgrade and/or remove or have constructed, maintained, repaired, altered, replaced, upgraded all or any portion of LESSEE'S wireless communication facility, including but not limited to, the equipment shelter, radio equipment, antenna support structures, antennas, utility conduits, poles, wires, anchors, guys, and all other appurtenant equipment and operations which are incidental thereto and necessary to operate and maintain LESSEE'S wireless communication facility (hereinafter "Facility"), and to transmit and receive communication signals in any and all frequencies which do not interfere with other wireless communications existing as of the date of this Agreement, and for all purposes incidental thereto. LESSEE shall be responsible for supplying, installing and maintaining all power and utilities for the Site.

LESSEE'S use of the Site shall conform to the equipment and antenna specifications described in Exhibit "D", attached hereto and by reference made a part hereof. LESSEE shall comply with any land use and building permit requirements of the Santa Barbara County Planning

Department. LESSEE shall not expand or upgrade its use of the Site beyond the scope of said specifications nor use the Site for any other purposes without the express written approval of the COUNTY'S Real Property Manager, such approval not to be unreasonably withheld, conditioned or delayed, and comply with all requirements of any and all permits. It is understood and agreed to by each party that LESSEE shall have the right to make changes to and replacements of equipment which are of a substantially similar or "like-kind" nature without having to obtain the approval of COUNTY, provided such changes do not alter the square footage of the lease area of the Site nor change the visual impact or change the level of antenna transmission of LESSEE'S Site and Facility. LESSEE shall notify COUNTY in writing within thirty (30) days of any such changes made to LESSEE'S Facility without COUNTY'S consent.

- 5. **TERM:** The initial term of this Agreement is for a period of ten (10) years ("Initial Term"), effective as of November 1, 2016 (hereinafter "Commencement Date") and shall terminate on October 31, 2026, unless sooner terminated as hereinafter provided.
- 6. **EXTENSION AND RENEWAL OF LEASE:** In the event this Agreement has not otherwise been terminated and LESSEE is not in Default (after expiration of all cure periods) at the end of the above-referenced term, then such term shall be extended for two (2) additional terms of five (5) years each (each a "Renewal Term") upon mutual agreement by LESSEE and COUNTY. All extensions shall be requested by LESSEE in writing at least three (3) months, but no more than twelve (12) months, prior to the expiration of the Initial Term or then current Renewal Term, and such extensions shall be set forth as follows:

Extension Period One: November 1, 2026 through October 31, 2031 Extension Period Two: November 1, 2031 through October 31, 2036

In the event of any such extensions the Rent shall be calculated as per Section 8, <u>RENT</u>, or such other basis as the parties may then agree. The Initial Term and any Renewal Terms are collectively referred to as the Term ("Term").

SECURITY DEPOSIT: A deposit in the amount of FIVE THOUSAND 7. DOLLARS (\$5,000.00) shall be due to COUNTY within forty-five (45) days after the date this Agreement is signed by COUNTY (hereinafter "Security Deposit"). COUNTY shall have the right to use monies from this Security Deposit to make any repairs or equipment removal not made by LESSEE for which LESSEE is otherwise obligated to make and to restore the Site in the event LESSEE does not properly do so according to its obligations as set forth in Section 13, ABANDONMENT OF SITE/DISPOSITION OF PERSONAL PROPERTY, Section 17, MAINTENANCE AND REPAIR, or Section 35, SURRENDER OF PREMISES, herein. In the event that, during the course of this Agreement, COUNTY is required to use a portion of the Security Deposit to make repairs, then LESSEE shall, within thirty (30) days of such repair and LESSEE'S receipt of COUNTY'S written notice to reimburse COUNTY, thereafter reimburse the Security Deposit monies used by COUNTY in connection with the repairs. At the expiration or earlier termination of this Agreement, COUNTY shall release the Security Deposit, less any costs related to repair or equipment removal, if any, within thirty (30) days of receipt of LESSEE'S written notice in accordance with the terms of Section 35, SURRENDER OF PREMISES, herein.

8. **RENT:** The base annual rent payable by LESSEE to COUNTY during the first year of this Agreement shall be THIRTY FOUR THOUSAND SIX HUNDRED SIXTY-EIGHT and 60/100 DOLLARS (\$34,668.60) ("Rent") in lawful money of the United States of America due concurrent and in accordance with Section 7, <u>SECURITY DEPOSIT</u>, of this Agreement. The initial Rent payment will be forwarded by LESSEE to County no later than forty-five (45) days after the date this Agreement is signed by COUNTY.

Thereafter, Rent shall be paid annually, in advance, on or before November 1st of each and every calendar year of the Term beginning in the year 2017. Rent due for any period during the Term which is for less than one (1) calendar year shall be prorated based upon a three hundred sixty-five (365) day year. The Rent shall be subject to adjustment as set out in Section 9, <u>COST OF LIVING ADJUSTMENT</u>, below. If Rent is not paid ten (10) days after the date due (the Commencement Date or any anniversary thereof), LESSEE shall pay the interest accrued on the unpaid balance at ten percent (10%) per annum from the date it became due until it is paid.

Rent payments shall be made payable to "County of Santa Barbara" and sent to COUNTY at the address as stated in Section 26, <u>NOTICES</u>, herein below.

- 9. <u>COST OF LIVING ADJUSTMENT</u>: Beginning on November 1, 2017, and on each and every anniversary of this date, the Rent provided in Section 8, <u>RENT</u>, above shall be subject to a Cost of Living Adjustment and shall be increased from the Rent payable during the immediately preceding year of the Term by three percent (3%).
- 10. <u>SITE SUITABILITY</u>: LESSEE has investigated the Property and the Site and has determined that they are suitable for LESSEE'S intended operations, and therefore, LESSEE hereby accepts, by way of executing this Agreement, the Site in its existing condition.

ACKNOWLEDGES THAT, **EXCEPT** LESSEE AS STATED HEREIN, TO LESSEE'S UTILITY INSTALLATION INCLUDING BUT NOT LIMITED REFERENCED IN SECTION 15 HEREOF, **COUNTY** HAS MADE REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE PROPERTY OR SITE, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY LESSEE.

11. CONSTRUCTION OF THE FACILITY AND FUTURE ALTERATIONS: LESSEE shall continue to operate the Site in its existing configuration and acknowledges that no alterations are planned as of the Commencement Date. LESSEE shall give COUNTY no less than ten (10) days written notice prior to the commencement of any installation or construction work in, on, or about the Site, with the exception of regular maintenance, minor repair visits and emergency work, and shall keep the Property and Site free and clear of liens for labor and materials by or on behalf of LESSEE.

LESSEE shall, during all phases of any construction, have a designated representative present on the Site to monitor construction. In addition, COUNTY, through its General Services Department, may, at its option, have a designated representative on Site who, during all phases of construction, shall have the right to suspend and/or terminate any and all phases of such construction that do not substantially comply with any approvals granted. The construction and installation to be done hereunder shall be scheduled and executed at such time and in such a way as

to cause, to the extent reasonably feasible, the least inconvenience to the COUNTY, it officers, agents, and employees and with proper consideration for the rights of other COUNTY tenants, vendors, contractors and the public.

In the event that LESSEE wishes during the installation and construction or in the future to alter or improve the Site in additional ways not anticipated by this section or by Section 14.D herein, LESSEE shall obtain the advance written approval from the COUNTY'S Real Property Manager, which approval shall not be unreasonably withheld, conditioned or delayed, and comply with all requirements of any permits. COUNTY, in its role as proprietor of the Property, shall use its best efforts to respond in a timely manner to LESSEE'S request to alter or improve the Site.

The requirements relating to construction set forth herein are those of COUNTY as landowner and not as a governmental entity. Nothing in this Agreement shall be construed to entitle LESSEE to undertake construction of the Facility or additional future improvements without complying with all permitting required by COUNTY in its governmental capacity.

COUNTY warrants that it has the right and the ability to enter into this Agreement on the subject Property.

12. TITLE TO FACILITY: Title to the Facility shall vest with LESSEE. Upon expiration of the Term of this Agreement, or earlier termination as provided herein, at LESSEE'S option, and upon COUNTY'S approval, title to the Facility and utility conduits, except as stated below, shall pass to COUNTY and the parties shall execute whatever documents are reasonably necessary to evidence such passing of title. In the event COUNTY takes title to the Facility, COUNTY acknowledges and agrees to take possession of the Facility and utility conduits in their then "as-is" condition, without any representation or warranty by LESSEE as to their fitness for a particular purpose, and LESSEE shall thereafter have no further liability for same. For purposes of this Section 12, TITLE TO FACILITY, radios, radio cabinet equipment, antennas, and other similar electronic equipment and any antenna structures (hereinafter "LESSEE'S Owned Facilities") shall not be a part of the Facility, and LESSEE shall retain title to such.

13. ABANDONMENT OF SITE/DISPOSITION OF PERSONAL PROPERTY: LESSEE shall not abandon, vacate, or surrender the Site at any time during the Term of this Agreement and if LESSEE does abandon, vacate, or surrender said Site, any personal property belonging to LESSEE and left on the Site more than sixty (60) days after notice from COUNTY

Agreement and if LESSEE does abandon, vacate, or surrender said Site, any personal property belonging to LESSEE and left on the Site more than sixty (60) days after notice from COUNTY to LESSEE of such abandonment, vacation or surrender shall be deemed abandoned at the option of the COUNTY, and title to such shall pass to COUNTY. This provision shall also apply to personal property left after the termination or other expiration of this Agreement and any applicable removal periods as described in Section 35, <u>SURRENDER OF PREMISES</u>. Notwithstanding the foregoing, COUNTY acknowledges that the Facility will be operated as an unmanned facility.

14. **NONINTERFERENCE:**

A. <u>Property</u>. LESSEE agrees not to use, nor permit those under its control, including, but not limited to, its employees, tenants, LESSEE'S invitees, agents and/or contractors, to use any portion of the Property, Site, or the Facility in any way which unreasonably interferes with the non-telecommunications use of the Property by COUNTY. Such interference shall be deemed a

material breach, and in the event of such interference caused by LESSEE, LESSEE shall terminate said interference promptly upon receipt of written notice from COUNTY. In the event LESSEE fails to stop such interference within forty-eight (48) hours after receipt of such notice, LESSEE shall cease operation of the Facility or remove the interfering equipment until such interference is eliminated.

- B. Telecommunications. LESSEE shall meet and comply with all non-interference rules of the Federal Communications Commission (hereinafter "FCC"). Subject to LESSEE'S rights hereunder, LESSEE shall not use, nor shall LESSEE permit its employees, invitees, agents or any others under its control to use the Property or Site in any way which materially interferes with the operations of other telecommunications users on the Property as of the date of execution of this Agreement, nor shall LESSEE at any time after the Commencement Date of this Agreement change the operations of its Facility or alter its Facility in such a manner which causes material interference to COUNTY or any other then-existing users or tenants on the Property as of the date of the change or alteration to the Facility. Such interference shall be deemed a material breach, and in the event of such interference caused by LESSEE, LESSEE shall terminate said interference promptly upon notice from COUNTY. In the event LESSEE fails to stop such interference within forty-eight (48) hours after receipt of such notice, LESSEE shall cease operation of the Facility or remove the interfering equipment until such interference is eliminated. COUNTY agrees that any other tenants of the Property who currently have or in the future take possession of the Property will not be permitted to install new or additional equipment that causes interference to the operation of LESSEE's Facility as of the date of such installation, provided LESSEE is in compliance with this Section.
- C. <u>Emergency</u>. In the event of an emergency which threatens bodily harm and involves COUNTY in its governmental capacity and the powering down of LESSEE'S Facility is required to respond to such emergency, COUNTY may require LESSEE to power down its operations at the Site without LESSEE'S consent. COUNTY shall use its best efforts to notify LESSEE as soon as possible of said emergency and COUNTY'S intent to require LESSEE to temporarily terminate its operations. COUNTY shall cooperate with LESSEE in the restoration of use when COUNTY has determined, in COUNTY'S sole and reasonable discretion that the emergency has ended.
- D. Equipment Modification. LESSEE shall obtain the written consent of COUNTY, which shall not be unreasonably withheld, conditioned, or delayed, prior to any proposed change in LESSEE'S use of the Site beyond the scope of said specifications in Exhibit "D"; including but not limited to antenna transmission, location or size of the Facility. Notwithstanding the preceding sentence, LESSEE, upon notice to COUNTY, may modify or upgrade its equipment and antennas, so long as such alterations do not increase their level of transmission, or change exterior location or size, or otherwise exceed the limits set forth in Section 4, PURPOSE AND USE, or in Exhibit "D" of this Agreement; without the written consent of COUNTY, which shall not be unreasonably withheld, conditioned, or delayed. LESSEE may remove its radio equipment, antennas, cabling, back up batteries and related equipment at any time.
- E. <u>Relocation</u>. COUNTY reserves the one-time right, at any time after the expiration of the Initial Term, to reasonably designate a new location for LESSEE'S Facility and to move said Facility elsewhere on the Property, provided that COUNTY shall give LESSEE at least One Hundred Twenty (120) days written notice of its request to relocate LESSEE'S Facility. The relocation of LESSEE'S Facility shall be done in accordance with the following terms:

- (i) The work and labor to relocate LESSEE'S Facility shall be done exclusively by LESSEE or its designated agents, and shall be done at LESSEE's sole cost and expense. The relocation of LESSEE'S Facility shall not result in any interruption of the communications service provided by LESSEE from the Property. The relocation of LESSEE'S Facility shall not impair, or in any manner alter, the quality of communications service provided by LESSEE from the Property. The relocation shall include new access and utility routes as reasonably required by LESSEE'S use of the new location of LESSEE'S Facility. The relocation of LESSEE'S Facility shall be done in accordance with the terms and conditions contained in paragraphs (ii), (iii) and (iv) below.
- COUNTY will exercise its right to relocate LESSEE'S Facility by (ii) delivering written notice to LESSEE. In the notice, COUNTY will propose an alternate site on the Property to which LESSEE may relocate its Facility. LESSEE will have sixty (60) days from the date it receives the notice to evaluate the alternate site. If LESSEE fails to approve or disapprove of the alternate site within the 60-day period or fails to request an extension of the review period in writing, then LESSEE will be deemed to have approved such proposed relocation. If LESSEE disapproves of the alternate site, then COUNTY, if practicable, may thereafter propose a new alternate site or a choice of alternate sites by notice to LESSEE in the same manner described above. LESSEE will then have the option to choose one of the new alternate sites within sixty (60) days from the date LESSEE receives notice of the new alternate site, or if none of the alternate sites enable LESSEE to continue its operations in a manner consistent with its operations at the original location of the Site, LESSEE may terminate this Agreement by providing COUNTY with ninety (90) day's written notice. Notwithstanding anything to the contrary contained herein, COUNTY shall use its best efforts to provide an alternate site for its proposed relocation. Any relocation site which COUNTY and LESSEE agree upon in writing is hereinafter referred to as the "Relocation Site". Within thirty (30) days after LESSEE has accepted the Relocation Site, LESSEE shall submit its application for any applicable permits for the Relocation Site and pursue permits expediently until obtained. LESSEE will have a period of ninety (90) days after obtaining its permits for the Relocation Site to relocate LESSEE'S Facility to the Relocation Site and cease operations at the previous Site.
- (iii) During the relocation of LESSEE'S Facility to the Relocation Site, LESSEE shall be allowed to install a temporary facility on COUNTY'S Property in a location approved by COUNTY, which approval shall not be unreasonably withheld, conditioned or delayed.

- Upon completion of the Relocation Site, LESSEE shall promptly remove its temporary facility.
- (iv) Upon relocation of LESSEE'S Facility, or any part thereof, to the Relocation Site, this Agreement shall be amended to show the new location. Each party hereby agrees that the Relocation Site (including the access and utility right of way) may be surveyed by a licensed surveyor at the sole cost of LESSEE and such survey shall be included in the lease amendment and become a part thereof and control in describing the Site. Except as expressly provided in this subsection, both parties hereby agree that in no event will the relocation of LESSEE'S Facility under the provisions of Section 14.E, or any part thereof, affect, alter, modify or otherwise change any of the terms and conditions of this Agreement.
- 15. <u>UTILITY CHARGES</u>: LESSEE, upon obtaining the required permits and approvals, shall have the right to install and maintain the necessary mains and ancillary equipment required to bring utility service to the Site and Facility, as described and depicted in Exhibit "C", at its sole cost and expense. All accounts for such utilities shall name LESSEE as the responsible party.

LESSEE shall be responsible for supplying and maintaining all power and utilities necessary for LESSEE's operations at the Site and Facility. LESSEE shall pay when due all charges for utilities used by LESSEE.

- 16. <u>TAXES AND ASSESSMENTS</u>: This Agreement may confer a possessory interest on LESSEE and LESSEE shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, if any, which, due to LESSEE'S Facility may be levied upon said Property, Facility and/or Site during the Term of this Agreement.
- 17. MAINTENANCE AND REPAIR/GRAFFITI REMOVAL: LESSEE agrees at its sole expense to keep in good maintenance and repair, reasonable wear and tear excepted, the Site and Facility. If LESSEE delays in making any repairs so that it becomes necessary for COUNTY, for sake of the operation of the Property, to make such repairs, then COUNTY shall, after providing the notice required, have the right to do so and use monies from the Security Deposit to pay the cost of such repairs. COUNTY shall not have any responsibility to maintain the Site or Facility, except to the extent such maintenance is required due to COUNTY'S negligence or intentional acts or omissions.

LESSEE shall, within twenty (20) days after receipt of notice from COUNTY, commence to perform maintenance and repair and remove or have removed graffiti from the Facility and Site at its sole expense.

18. <u>ASSIGNMENT/SUBLEASE/HYPOTHECATION</u>: LESSEE shall not assign, license, or sublease the Site or any part thereof or any right or privilege appurtenant thereto without COUNTY'S written consent which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, upon written notification to COUNTY, LESSEE may assign

this Agreement to its parents, partners, or affiliates, or to an entity that purchases all or substantially all of LESSEE'S assets in the FCC market in which the Property is located ("Transferee").

LESSEE shall not mortgage, pledge, hypothecate, or encumber the Property, the Site, or any interest therein, including without limitation its leasehold; nor shall LESSEE mortgage, pledge, hypothecate, or encumber any improvements placed upon the Property or Site whether such improvement is placed thereon before or after the date of execution of this Agreement.

Any attempt to assign, license, sublease, mortgage, pledge, hypothecate or in any other way encumber LESSEE'S rights under this Agreement or LESSEE'S interest in the Site without COUNTY'S consent shall be void and without legal effect.

Upon COUNTY's receipt of written notice of LESSEE's assignment in full to a Transferee of this Agreement or upon COUNTY's consent to any other assignment, LESSEE will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

- 19. <u>SUCCESSORS IN INTEREST</u>: This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties, their heirs, personal representatives, successors and assigns and to any organization into which LESSEE may be merged.
- 20. <u>INDEMNIFICATION</u>: LESSEE shall defend, indemnify, and save harmless COUNTY, its officers, agents, and employees, from any and all claims, demands, damages, costs, expenses (including reasonable attorney's fees), judgments, or liabilities arising out of LESSEE's breach of this Agreement or occasioned by any act or omission to act on the part of LESSEE or its agents or employees or other independent contractors directly responsible to LESSEE; except those claims, demands, damages, costs, expenses (including reasonable attorney's fees), judgments or liabilities resulting from the negligence or acts or omissions by the COUNTY.

LESSEE shall notify COUNTY in the event of any accident or injury arising out of or in connection with this Agreement within forty-eight (48) hours after LESSEE's actual knowledge of such event.

- 21. **INSURANCE:** LESSEE shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by LESSEE, its agents, representatives, employees, contractors or subcontractors.
 - A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - 1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
 - 2. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if LESSEE has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit of \$2,000,000 per accident for bodily injury and property damage.

- 3. **Workers' Compensation**: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of \$1,000,000 per accident for bodily injury or disease, policy limit.
- B. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 1. Additional Insured COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the LESSEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the LESSEE's insurance at least as broad as both CG 20 10 and CG 20 37 if a later edition is used).
 - 2. **Primary Coverage** For any claims related to this Agreement, the LESSEE's required insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the LESSEE's required insurance and shall not contribute with it.
 - 3. **Notice of Cancellation** LESSEE shall provide at least 30 days prior written notice to the COUNTY of cancellation of any required coverage that is not replaced.
 - 4. Waiver of Subrogation Rights LESSEE hereby grants to COUNTY a waiver of any right to Workers' Compensation subrogation which any insurer of said LESSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
 - 5. **Acceptability of Insurers** Unless otherwise approved by Risk Management, insurance shall be written by insurers eligible to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
 - 6. Verification of Coverage LESSEE shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive LESSEE's obligation to provide them. LESSEE shall furnish evidence of renewal of coverage throughout the term of the Agreement.
 - 7. Failure to Procure Coverage In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to

provide evidence of renewal may be treated by COUNTY as a material breach of contract.

- 8. **Subcontractors** LESSEE shall endeavor to require and verify that all subcontractors while working hereunder maintain insurance that is reasonable and prudent, and LESSEE shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
- 9. **Special Risks or Circumstances** COUNTY reserves the right to modify these requirements, including limits, once per Term or Renewal Term, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 10. Notwithstanding the foregoing, LESSEE may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Agreement. In the event LESSEE elects to self insure its obligation under this Agreement to include COUNTY as an additional insured, the following conditions apply: (i) COUNTY shall promptly and no later than thirty (30) days after notice thereof provide LESSEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide LESSEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) COUNTY shall not settle any such claim, demand, lawsuit or the like without the prior written consent of LESSEE; and (iii) COUNTY shall fully cooperate with LESSEE in the defense of the claim, demand, lawsuit, or the like.

Except for indemnification pursuant to Section 20, <u>INDEMNIFICATION</u>, and Section 23, <u>ENVIRONMENTAL IMPAIRMENT</u>, neither party shall be liable to the other, or any of their respective agents, representatives, and employees, for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LESSEE agrees to execute any such mutually agreeable amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

22. **NONDISCRIMINATION:** LESSEE shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

LESSEE's noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefore.

23. **ENVIRONMENTAL IMPAIRMENT:** LESSEE shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Property, Facility or Site due to LESSEE'S use and occupancy, LESSEE shall clean all property affected to the reasonable satisfaction of COUNTY and any governmental body having jurisdiction therefore. LESSEE shall indemnify, hold harmless, and defend COUNTY from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, reasonable attorney's fees, and consulting engineering and construction costs) incurred by COUNTY as a result of LESSEE'S breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution due to LESSEE'S use and occupancy, regardless of whether such liability, cost or expense arises during or after the Term of this Agreement, except to the extent caused by the negligence or willful misconduct of COUNTY. COUNTY agrees to hold harmless and indemnify LESSEE from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of COUNTY for, payment of penalties. sanctions, forfeitures, losses, costs or damages, and for responding to any claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the effective date of this Agreement or from such contamination caused by the acts or omissions of the COUNTY during the Term.

LESSEE agrees that during all maintenance on the Property by COUNTY, while following the procedures and guidelines set forth by the Occupational Safety and Health Administration (OSHA) and the FCC implementing the National Environmental Policy Act of 1969, when continuing transmission is deemed unsafe for COUNTY personnel due to radiation (based upon standards promulgated by a federal or state governmental authority having jurisdiction over LESSEE), the affected transmitters of LESSEE will be turned off during such maintenance for so long as the unsafe condition exists. The earliest practicable notice will be given to LESSEE using the information in Section 26, NOTICES.

- 24. TOXICS: LESSEE shall not manufacture or generate hazardous wastes on or in the Facility, Site, Property, or surrounding property unless specifically authorized by this Agreement. LESSEE shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by LESSEE, its agents, employees, or designees on or in the Facility, the Site, Property, or surrounding property during the Term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. LESSEE shall notify COUNTY and the appropriate governmental emergency response agency (ies) immediately in the event of any release or threatened release of any such wastes, substances or materials by LESSEE.
- 25. **COMPLIANCE WITH THE LAW:** LESSEE agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to LESSEE's use of the

Facility on the Property. COUNTY agrees to comply with all Laws relating to COUNTY'S ownership and use of the Property and any improvements on the Property.

26. **NOTICES:** Any notice to be given to the parties shall be in writing and shall be served, either personally or by mail, to the following:

COUNTY: County of Santa Barbara

General Services Department 1105 Santa Barbara Street Santa Barbara, CA 93101 Attn: Real Property Manager

(805) 568-3070

LESSEE: New Cingular Wireless, LLC

Re: Cell Site No.: SBV036 (BATES ROAD (CA))

Fixed Asset No. 10086349 575 Morgoso Drive NE Atlanta, GA 30324

Attn: Network Real Estate

(877) 231-5447

With a copy to:

New Cingular Wireless, LLC

AT&T Legal Department - Network Operations

Attn: Network Counsel

Re: Cell Site No.: SBV036 (BATES ROAD (CA))

Fixed Asset No. 10086349 208 South Akard Street Dallas, TX 75202-4206

or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail, reliable overnight courier, or by personal delivery. The date of delivery or refusal of delivery shall constitute the date of service. The telephone numbers included in this Section are for reference only and a phone call does not constitute official notice when such notice is required by this Agreement.

27. **DEFAULT:** Except as otherwise required herein, should LESSEE at any time fail to comply with any covenant contained herein, then LESSEE shall be in Default and COUNTY shall give written notice to LESSEE specifying the particulars of the Default and LESSEE shall promptly commence remedial action to cure the Default. Should such Default continue uncured for a period of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of the COUNTY; unless the cure of a non-monetary Default shall reasonably take more than thirty (30) calendar days in which case LESSEE shall proceed with all due speed to cure the Default and

shall have a reasonable time to effectuate its cure. Except as otherwise required herein, should COUNTY at any time fail to comply with any covenant contained herein, LESSEE shall give written notice to COUNTY specifying the particulars of the Default and COUNTY shall promptly commence remedial action to cure the Default. Should such Default continue uncured for a period of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of the LESSEE; unless the cure of the Default shall reasonably take more than thirty (30) calendar days in which case COUNTY shall proceed with all due speed to cure the Default and shall have a reasonable time to effectuate its cure.

- 28. **REMEDIES:** In the event of a Default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such Default including but not limited to the following:
 - A. Waive the Default in accordance with Section 29, <u>WAIVER</u>, herein below.
 - B. Maintain this Agreement in full force and effect and recover whatever monetary loss (es) may have resulted from such Default.
 - C. Terminate the Agreement in accordance with Section 31, <u>TERMINATION</u>.
- 29. <u>WAIVER</u>: It is understood and agreed that any waiver, express or implied of any term of this Agreement shall neither waive, nor be construed to waive the subsequent enforcement of any other term of this Agreement or any subsequent Default under Section 27, <u>DEFAULT</u>.
- 30. **AMENDMENTS:** This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties.
- 31. **TERMINATION:** This Agreement shall terminate and all rights of LESSEE shall cease and LESSEE shall quietly and peacefully deliver to COUNTY, possession and interest in the Site:
 - A. Upon expiration or earlier termination of the Agreement as provided in Section 5, TERM; or
 - B. After making all reasonable and good faith efforts to obtain applicable certificates, permits and approvals, if any of LESSEE'S applications for applicable certificates, permits and other approvals issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that LESSEE will no longer be able to use the Site for its intended purposes or the LESSEE reasonably and in good faith determines that the Site is no longer economically or technologically feasible for its intended use. Such termination shall be effective upon written notice to COUNTY in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by COUNTY; provided, however, that LESSEE must provide COUNTY with 12 months written notice of its intention to terminate this Agreement for economic or technological reasons; or
 - C. In accordance with Section 41, <u>CONDEMNATION</u>; or
 - D. If LESSEE is adjudged bankrupt, in accordance with Section 42,

BANKRUPTCY.

This Agreement may also terminate:

- AA. At LESSEE's option in accordance with Subsection 14.E, "Relocation"; or
- BB. At COUNTY's option if LESSEE fails to comply with COUNTY laws, rules and regulations regarding nondiscrimination as provided in Section 22, NONDISCRIMINATION; or
- CC. At the option of the nondefaulting party at the end of the cure period in accordance with Section 27, <u>DEFAULT</u>; or
- DD. At the option of either party in accordance with Section 32, DESTRUCTION.

Upon termination of this Agreement pursuant to Section 31, <u>TERMINATION</u>, all rights of LESSEE to the Site shall cease and LESSEE shall quietly and peacefully deliver to COUNTY, possession and interest in the Site in accordance with Section 35, <u>SURRENDER OF PREMISES</u>.

- 32. **DESTRUCTION:** If the Facility or the Site is partially or totally destroyed by fire or other casualty, this Agreement, at the option of COUNTY or LESSEE, shall terminate.
- 33. **HOLDING OVER:** Should LESSEE occupy the Site after the expiration date of this Agreement or any extension thereof, with the consent of the COUNTY, expressed or implied, such possession shall be construed to be a tenancy from month to month and LESSEE shall pay COUNTY for such tenancy at the monthly rental rate in effect on the expiration date.
- 34. <u>AGENCY DISCLOSURE</u>: LESSEE acknowledges that the General Services Department, Facilities Services Division, of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for LESSEE nor a dual agent in this transaction.
- 35. **SURRENDER OF PREMISES:** Upon expiration or termination of this Agreement, LESSEE shall vacate and surrender possession of, and any claim to the Site, leaving it in good condition, except for ordinary wear and tear.

Notwithstanding the foregoing and subject to Section 12, <u>TITLE TO FACILITY</u>, LESSEE shall remove LESSEE'S Owned Facilities within sixty (60) days prior to the date of such expiration or within sixty (60) days after the earlier termination of this Agreement and LESSEE shall retain title to LESSEE'S Owned Facilities. Alternatively, upon such expiration or termination, COUNTY may request in writing at least ninety (90) days prior to such expiration or within ninety (90) days after the earlier termination of this Agreement the removal of the Facility, in whole or in part, and if COUNTY so requests, LESSEE shall remove or have said Facility (including LESSEE'S Owned Facilities) or such lesser portions as COUNTY may request removed as soon as is practicable, at LESSEE'S sole cost.

Upon completion of LESSEE'S removal of its Facility, LESSEE shall obtain COUNTY's approval, not to be unreasonably withheld, conditioned or delayed, that said Facility has been removed and the Site restored to good condition.

36. <u>CAPTIONS</u>: The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part

hereof.

- 37. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 38. <u>CERTIFICATION OF SIGNATORY</u>: The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind COUNTY and LESSEE to its terms and conditions or to carry out duties contemplated herein.
- 39. **PERMITTED PERSONNEL:** LESSEE shall be solely liable for all actions of its agents, employees, contractors, subcontractors, and any others it permits on the Property or Site and shall be responsible for any and all damages resulting from their actions.
- 40. **FIRE DAMAGE:** LESSEE agrees to hold COUNTY harmless and indemnify COUNTY from any damage or injury to COUNTY, other persons or to property resulting from any fire caused by LESSEE, its agents, employees, or permittees, except to the extent such fire is caused by the acts or omissions of COUNTY.
- 41. **CONDEMNATION:** In the event the Property or any part thereof is taken by condemnation, eminent domain, or any such proceeding that precludes access to or use of the Site, COUNTY shall have the exclusive right to control the defense of any such action in condemnation or eminent domain and to defend any such action and settle the same in COUNTY'S absolute discretion. LESSEE agrees that COUNTY shall have the right, but not the obligation, to defend or settle any such action in condemnation or eminent domain affecting any of LESSEE'S installations at the Site.

LESSEE shall receive from COUNTY such proportionate amount of the judgment, award, or settlement as shall be attributable to LESSEE'S interests.

In the event that full or partial possession of the Site is obtained by a public agency or other agency empowered to take by eminent domain, in a manner which precludes LESSEE'S intended use, this Agreement shall terminate as of the effective date of possession and upon such termination, any obligation of LESSEE to pay Rent shall cease with the payment of the prorated portion of rental obligations up to said termination date. Any prepaid Rent shall be returned to LESSEE from the effective date of termination.

In the event of a partial taking, this Agreement may continue at COUNTY'S option, however, Rent hereunder may be reduced proportionately.

42. **BANKRUPTCY:** If LESSEE is adjudged bankrupt, this Agreement shall immediately terminate and the same shall not be treated as an asset of LESSEE after such adjudication, nor shall it pass to the control of any trustee or assignee of LESSEE by virtue of any process in bankruptcy or insolvency by execution or attachment.

- 43. **CONSTRUCTION:** The parties to this Agreement agree that each party and its respective counsel have reviewed and approved this Agreement to the extent that each party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The terms and conditions of this Agreement embody the parties' mutual intent, and this Agreement shall not be construed more liberally in favor of, nor more strictly against any party hereto.
- 44. **FACSIMILE SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission of the facsimile, except that funds shall not be released upon a facsimile signature nor shall facsimile signed documents be accepted for recordation by the Clerk Recorder of the County.
- 45. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
- 46. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, COUNTY and LESSEE have executed this Agreement by the respective authorized officers as set forth below to be effective as of the date executed by COUNTY.

	"COUNTY" COUNTY OF SANTA BARBARA
ATTEST: CLERK OF THE BOARD	By: Joan Hartmann, Chair Board of Supervisors
By:	Date:
APPROVED AS TO ACCOUNTING: THEODORE A. FALLATI, CPA AUDITOR-CONTROLLER	"LESSEE" Santa Barbara Cellular Systems, Ltd., a Georgia limited partnership
By: Hotzy M. Schalls Deputy	By: Santa Barbara Holding, Ltd., a Georgia limited partnership Its: General Partner
APPROVED AS TO FORM: MICHAEL GHIZZONI COUNTY COUNSEL By: Deputy	By: New Cingular Wireless PCS, LLC, a Delaware limited liability company Its: Managing Partner By: JAMES STICKNEY Title: DIRECTOR C &E
APPROVED: Don Grady Real Property Manager	APPROVED AS TO INSURANCE FORM: Ray Aromatorio, ARM, AIC Risk Program Administrator

"PROPERTY"

Exhibit "A"

"SITE" Exhibit "B"

"ARCHITECTURAL PLANS"

Exhibit "C"

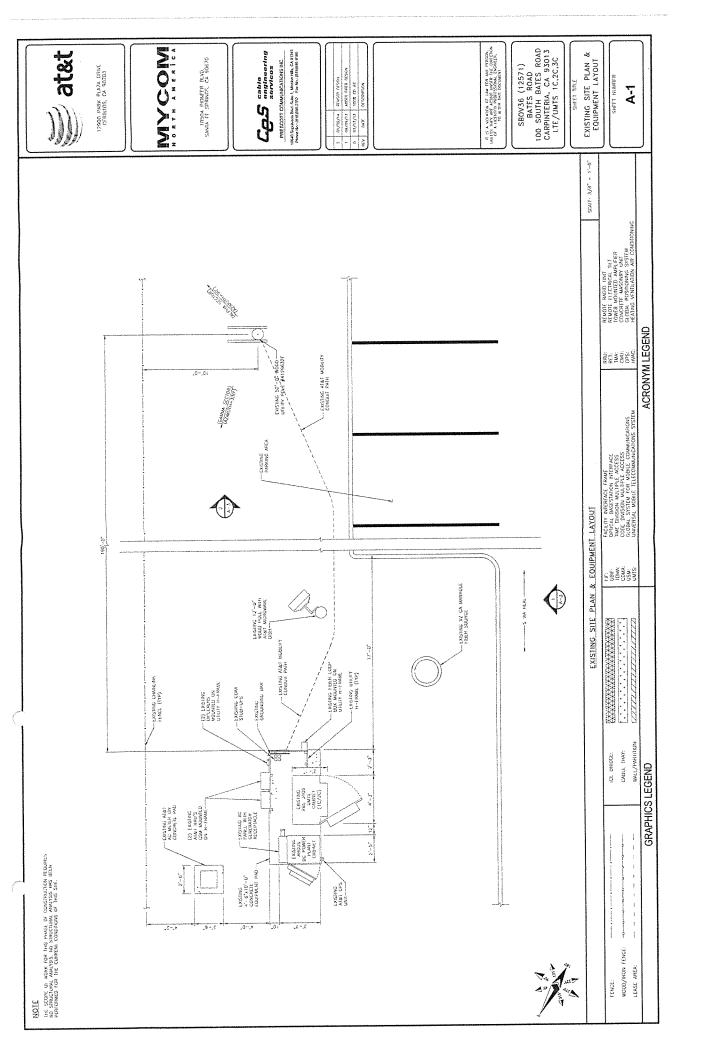
"EQUIPMENT AND ANTENNA SPECIFICATIONS" Exhibit "D"

"LAND USE PERMITS" Exhibit "E"

"PROPERTY"

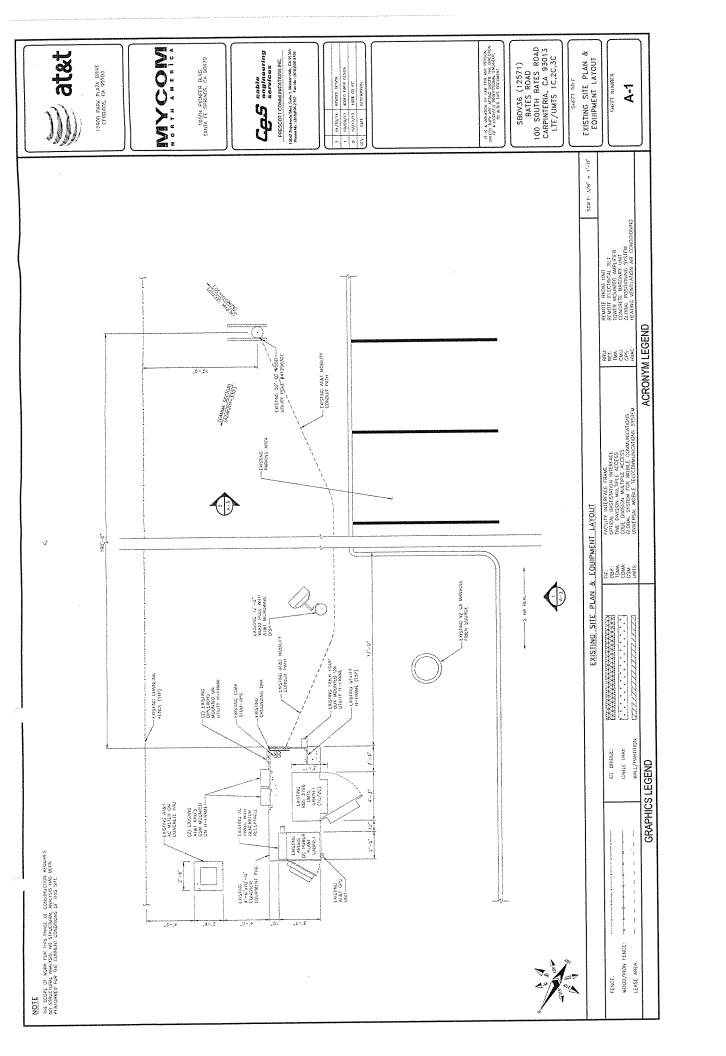
Exhibit "A"

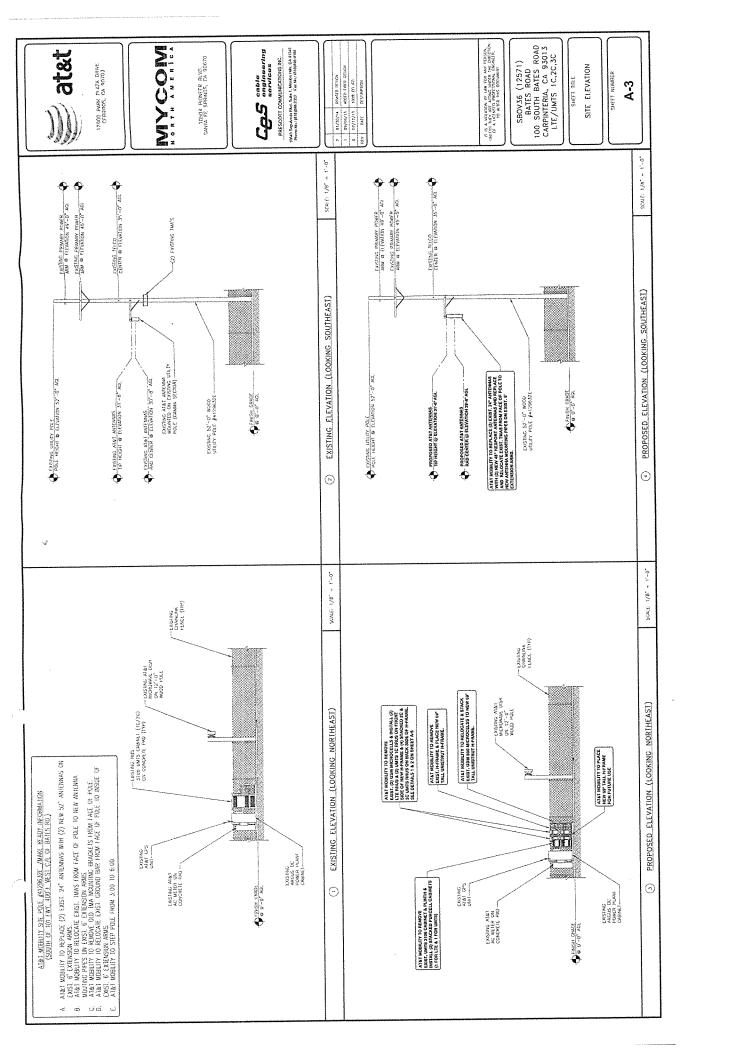
"SITE" Exhibit "B"



"ARCHITECTURAL PLANS"

Exhibit "C"





"EQUIPMENT AND ANTENNA SPECIFICATIONS" Exhibit "D"

