

SANTA BARBARA COUNTY AGENDA BOARD LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: **January 17, 2003**
Department: **General Services**
Department No.: **063**
Agenda Date: **February 4, 2003**
Placement: **Administrative**
Estimate Time:
Continued Item: **NO**
If Yes, date from:

TO: Board of Supervisors

FROM: Ronald S. Cortez, Director
General Services Department

STAFF
CONTACT: Jason Sunukjian 568-3217
Real Property Agent

SUBJECT: SM/Sprint PCS @ Betteravia: Lease
Fifth Supervisorial District
Real Property Folio EU 3336

Recommendations:

That the Board of Supervisors execute the attached Lease Agreement between the County of Santa Barbara and Sprint PCS Assets, LLC (hereinafter "Sprint") for the placement of a wireless communication facility, consisting of radio equipment cabinets and cellular antennas, on the roof of the Betteravia Government Center building at 2125 Center Pointe Parkway, City of Santa Maria. The lease is for an initial period of approximately ten (10) years, commencing upon execution of this Lease by the Board. There are also two renewal periods of five (5) years each that may be exercised upon mutual agreement by County and Sprint. If all the renewal periods are exercised, the lease will expire on January 31, 2023. Sprint will pay to the County a base annual rent of \$19,200.00. There will be a rent increase of three percent (3%) during the first ten (10) years of the lease and a five percent (5%) rent increase during years 10-20 of the lease. If all the lease renewal terms are exercised, the total lease revenue will be approximately \$550,000.00.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 1.: An efficient government able to respond effectively to the needs of the community.

Subject: SM/Sprint PCS @ Betteravia: Lease
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Executive Summary and Discussion:

This Lease Agreement will allow Sprint to construct and operate a small wireless communication facility, consisting primarily of radio equipment cabinets, utilities, cables and panel antennas, on the rooftop of Betteravia Government Center Building at 2125 Center Pointe Parkway, City of Santa Maria. It is noted that Sprint has already obtained all the required permits to allow construction of this facility; such permits are attached to this Lease as Exhibits F and G. Included in Sprint's permit process was a review of CEQA, which resulted in a finding of "Exempt" by the City of Santa Maria. Execution of this Lease by the Board is the final action required in order for Sprint to begin construction of their facility. This lease will produce at least \$19,200.00 of revenue per year (this base rent is subject to annual increases as noted above) to the County, all of which will help fund the Employee University.

On September 11, 2001, the Board executed a similar lease on this Building between Alpine PCS and the County (COB File No. 01-22,164; RP Folio No. EU3320) to allow construction of Alpine's wireless facility on the roof of the building. County staff, including the Building and Safety Department inspector, have concluded that both Alpine's facility and Sprint's facility can co-exist on the Building. The terms of Alpine's lease with the County are relatively similar to the lease negotiated with Sprint.

Mandates and Service Levels:

There is no change in programs. Wireless communications will be improved for use by the general public.

Fiscal and Facilities Impacts:

Sprint will pay base annual rent in the amount of \$19,200.00 and is responsible for all costs associated with construction and maintenance of their facility and equipment. A security deposit of \$5,000.00 will be deposited by Sprint to allow the County to repair any damage to the building caused by Sprint's facility in the event that such damage is not repaired by Sprint. The rental revenue will help fund the Employee University. The rent will be deposited to Non-Departmental Revenue 990, Fund 0001, Program 7300, Account 3409.

Special Instructions:

After Board action, distribute as follows:

- | | |
|--|--|
| 1. Original Lease | Clerk of the Board Files |
| 2. Duplicate Original Lease and Minute Order | Facilities Services, Attn: Jason Sunukjian |

NOTE: Facilities Services will make copies of the Lease and the Minute Order for the Communications Section of General Services and for our files, and will deliver the duplicate original to Sprint for their files.

Concurrence:
Employee University
Risk Management

Project: Sprint PCS at Betteravia
APN: 128-085-042
Folio: EU 3336
Agent: JJS

LEASE AGREEMENT
SPRINT PCS at BETTERAVIA SOCIAL SERVICES BUILDING

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

SPRINT PCS ASSETS, L.L.C.,
a Delaware limited liability company,
hereinafter referred to as "LESSEE,"

with reference to the following:

WHEREAS, COUNTY is the owner of that certain real property commonly known as the Betteravia Government Center, located at 2125 Center Pointe Parkway, Santa Maria, CA 93455, more particularly described as Assessor's Parcel Number 128-085-042, which property is improved with a commercial office building (hereinafter "Building") 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 wishes to improve its communication network by installing and operating a wireless communication facility used for providing cellular telephone service, as defined herein, on the said Property; and

WHEREAS, LESSEE desires to enter into a lease agreement (hereinafter "Agreement"), with the COUNTY for the placement and use of such 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. **ADMINISTRATION AND ENFORCEMENT:** The provisions of this Agreement shall be administered and enforced for the COUNTY by the COUNTY'S Department of General Services.

2. **LEASED AREA:** COUNTY hereby leases to LESSEE and LESSEE hereby takes from COUNTY the specific portion of the Building to be occupied by LESSEE'S wireless communication facility (hereinafter "Site") as shown on Exhibit "B", attached hereto and incorporated herein by reference.

3. **ACCESS TO THE SITE:** LESSEE shall be allowed access to the Site during the normal business hours of the Building, which are generally 8 a.m. to 5 p.m., Monday through Friday unless the Building is otherwise closed. For any other access required (emergency situations excepted), LESSEE give reasonable notice, which shall be defined as 5 business days, to COUNTY'S Department of General Services prior to gaining access to the Site. In the event emergency access is required, LESSEE shall contact COUNTY'S designated personnel for access to the Site.

COUNTY shall not be liable to LESSEE for lack of access to the Site. 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.

LESSEE shall comply with all COUNTY security programs and policies regarding LESSEE'S access onto the Building.

4. **PURPOSE AND USE:** LESSEE shall use the Site to construct, maintain, repair, alter, replace and/or remove or have constructed, maintained, repaired, altered, replaced, and/or removed 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 approved by COUNTY 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'S use of the Site shall conform to the equipment and antenna specifications described in Exhibit "C", attached hereto and by reference made a part hereof.

5. **TERM:** The term of this Agreement is for a period of ten (10) years, more or less, commencing on the date fully executed by COUNTY (hereinafter "Effective Date") and terminating on January 31, 2013, 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 in good standing at the end of the above-referenced term, then such term may be extended for two (2) additional terms of five (5) years upon mutual agreement of LESSEE and COUNTY. All extensions shall be requested by LESSEE in writing at

least sixty (60) days prior to the termination of the then current term, and such extensions shall be set forth as follows:

Extension Period One, 5 years February 1, 2013 through January 31, 2018

Extension Period Two, 5 years February 1, 2018 through January 31, 2023

In the event of any such extensions the rent shall be calculated as per Section 8, RENT, or such other basis as the parties may then agree.

7. **SECURITY DEPOSIT:** A deposit in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) shall be due to COUNTY within 30 days after the Effective Date or prior to the commencement of construction of LESSEE'S Facility, whichever occurs earlier ("Security Deposit"). COUNTY shall have the right to use monies from this Security Deposit to make any repairs 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 34, 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 repairs, reimburse the Security Deposit monies used by COUNTY in connection with the repairs. At the expiration or earlier termination of this Agreement, notwithstanding the provisions of Section 34, SURRENDER OF PREMISES, COUNTY shall refund any remaining monies from the Security Deposit to LESSEE.

8. **RENT:** The annual rent payable by LESSEE to COUNTY during the first year of this Agreement shall be NINETEEN THOUSAND TWO HUNDRED DOLLARS and 00/100 (\$19,200.00) lawful money of the United States of America due within thirty (30) days after the Effective Date of this Agreement and prior to the start of construction of LESSEE'S Site. Thereafter, payments shall be made annually, in advance, on or before the first day of November of each and every calendar year. Rent due for any period during the term hereof which is for less than one (1) calendar year shall be prorated based upon a three hundred sixty-five (365) day year. The annual rent shall be subject to adjustment as set out in Section 9, RENT ADJUSTMENT, below. If rent is not paid ten (10) days after the initial due date or any anniversary thereof, interest will accrue on the unpaid balance at ten percent (10%) per annum from the date it became due until it is paid.

Rental payments shall be made payable to COUNTY and mailed to County General Services Department at the address as stated in Section 25, NOTICES, herein below.

9. **RENT ADJUSTMENT:** The rent provided in Section 8, RENT, herein above, shall be subject to an annual Cost of Living Adjustment of THREE PERCENT (3%) per annum during the initial term of this Agreement. During Extension Period One and Extension Period Two of this Agreement, the rent shall be subject to an annual Cost of Living Adjustment of FIVE PERCENT (5%) per annum. Beginning November 1, 2003, and on each and every annual anniversary of that date, the annual rent shall be increased from the annual rent payable during the immediately preceding year of the lease term.

10. **SITE SUITABILITY:** 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.

LESSEE ACKNOWLEDGES THAT, EXCEPT AS STATED HEREIN, COUNTY HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE PROPERTY OR SITE, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY LESSEE.

11. **CONSTRUCTION AND IMPROVEMENTS/TITLE:** LESSEE shall, at its sole expense, erect and maintain the Facility in accordance with the design specifications of the architectural plans attached hereto as Exhibit "D" and by reference made a part hereof. LESSEE shall give COUNTY no less than ten (10) days written notice prior to the commencement of any 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.

Any work done on or around the Site during the construction of LESSEE'S Facility shall conform to the construction schedule described in Exhibit "E", attached hereto and by reference made a part hereof. LESSEE shall, during all phases of construction, have a designated representative present on the Site to monitor construction and ensure compliance with the aforementioned work plan. 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 comply with Exhibit "D" or Exhibit "E".

During the term of this Agreement, title to the Facility shall vest with LESSEE. Upon expiration of the term of this Agreement (or any extension thereof), or earlier termination as provided herein, at COUNTY'S request, title to the Site and Facility, except as stated below, thereon shall pass to COUNTY and LESSEE shall execute whatever documents are reasonably requested by COUNTY to evidence such passing of title. For purposes of this Section 11, CONSTRUCTION AND IMPROVEMENTS/TITLE, coaxial cable, radios, radio cabinet equipment, antennas, and other similar electronic equipment shall not be a part of the Facility, and LESSEE shall retain title to such. COUNTY may retain ownership of the improvements made to the Building by LESSEE.

Upon compliance with all required permitting, construction of the Facility shall begin promptly upon execution of this Agreement and be pursued expediently to completion. Copies of the required Land Use Permit(s) and Building Permit(s) are attached hereto and by reference made a part hereof as Exhibits "F" and "G", respectively.

In the event that LESSEE wishes to alter or improve the Site in additional ways not anticipated by this section or by Section 13.D. herein, LESSEE shall obtain the advance written approval from the County Architect and COUNTY'S General Services Department Real Property Supervisor and comply with all requirements of any permits. COUNTY 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 nor 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. **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 thirty (30) days after 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.

13. **NONINTERFERENCE:**

A. Property. 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, the Site, or the Facility in any way which interferes with the non-telecommunications use of the Property. Such interference shall be deemed a material breach, and LESSEE shall terminate said interference immediately upon notice from COUNTY. In the event LESSEE fails to stop such interference promptly, this Agreement shall terminate at the option of COUNTY.

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 Effective Date of this Agreement change the operations of its Facility or alter its Facility in such a manner which causes interference to COUNTY or any other users or tenants of the Property. Upon written notification from COUNTY, LESSEE shall act expediently to eliminate any interference caused by its use. LESSEE acknowledges that continuing interference may cause irreparable injury to other telecommunications users. Therefore, in the event LESSEE does not terminate said interference within forty-eight (48) hours of notice from COUNTY, unless 48 hours is an unreasonable cure period and each party agrees to a new cure period, then such user(s) shall have the right to bring an action to enjoin such interference and collect damages from LESSEE; and COUNTY may terminate this Agreement.

In the event COUNTY constructs, or allows to be constructed, a telecommunications facility on the Property, then COUNTY, its employees, invitees, agents or any others under its control, shall not use said facility in any way which materially interferes with the operations of LESSEE. Upon written notification from LESSEE, COUNTY shall have the responsibility to terminate said interference.

C. Emergency. In the event of an emergency which threatens bodily harm and involves COUNTY in its governmental capacity, COUNTY may terminate LESSEE'S operations 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 terminate operations. COUNTY shall cooperate with LESSEE in the restoration of use when COUNTY has determined, in COUNTY'S sole discretion, that the emergency has ended.

D. Equipment Modification. LESSEE shall obtain the written consent of COUNTY prior to any proposed change in LESSEE'S use of the Site beyond the scope of said specifications in Exhibit "C"; 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 "C" of this Agreement; without the written consent of COUNTY. LESSEE may remove its radio equipment, antennas, cabling, back up batteries and related equipment at any time.

E. Relocation. COUNTY reserves the one-time right 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 sixty (60) days written notice of the relocation and bear the sole expense of said relocation. 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. 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 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.
- (ii) COUNTY will exercise its right to relocate LESSEE'S Facility by 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 thirty (30) days from the date it receives the notice to evaluate the alternate site. If LESSEE fails to approve of the alternate site within the 30-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 the 30-day period, 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 30-day written notice. Any relocation site which COUNTY and LESSEE agree upon in writing is hereinafter referred to as the "Relocation Site". Within thirty (30) days after execution of the written agreement, LESSEES 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 or Building in a location approved by COUNTY, which approval shall not be unreasonably withheld or unreasonably conditioned. 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, or any part thereof, affect, alter, modify or otherwise change any of the terms and conditions of this Agreement.

14. **UTILITY CHARGES:** 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 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 for the Site and Facility. LESSEE shall pay when due all charges for utilities used by LESSEE.

15. **TAXES AND ASSESSMENTS:** 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.

16. **MAINTENANCE AND REPAIR/GRAFFITI REMOVAL:** LESSEE agrees to keep in good maintenance and repair, at its sole expense, the Site and Facility, except that COUNTY shall be responsible for repairing any damage to the Site caused by COUNTY. 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 have the right to do so and use monies from the Security Deposit to pay the cost of such repairs.

LESSEE shall, within ten (10) days of notice from COUNTY, remove or have removed graffiti from the Facility and Site at its sole expense.

17. **ASSIGNMENT/SUBLEASE/HYPOTHECATION:** 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.

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 except as provided in Section 18, **SUCCESSORS IN INTEREST**, below.

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 provided, however, that LESSEE remains surety for the performance of its assignee.

18. **SUCCESSORS IN INTEREST:** This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any organization into which LESSEE may be merged.

19. **INDEMNIFICATION:** LESSEE shall defend, indemnify, and save harmless COUNTY, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments, or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of LESSEE or its agents, employees, or other independent contractors directly responsible to LESSEE; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the COUNTY.

LESSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

20. **INSURANCE:** Certificate(s) of Insurance shall be furnished to COUNTY immediately upon execution of this Agreement and annually thereafter. Such insurance coverages, in the minimum limits as specified below, shall be maintained throughout the term of the Agreement. COUNTY shall have the right to review from time to time the minimum limits as established below. In the event of a change in the minimum limits, COUNTY shall inform LESSEE of such change by giving written notice to LESSEE not less than sixty (60) days prior to the expiration date of any existing insurance policy or policies, but in no event shall the minimum coverage amounts for all insurance required hereby be adjusted upward by more than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) every five (5) years. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Failure to comply with the insurance requirements shall place LESSEE in default. If, due to any claims or actions against or involving COUNTY, COUNTY may, in its sole discretion,

request LESSEE to provide certified copies of any insurance policies to COUNTY within thirty (30) calendar days.

A. Workers' Compensation Insurance. Statutory Workers' Compensation and Employees Liability Insurance shall cover all LESSEE'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by COUNTY.

B. General and Automobile Liability Insurance. The General Liability Insurance shall include personal injury liability, shall afford coverage for product liability, shall afford coverage for all premises and operations of LESSEE, and shall include contractual liability coverage for this Agreement. The Automobile Liability Insurance shall cover all owned, non-owned, and hired motor vehicles which are operated on behalf of LESSEE pursuant to LESSEE'S activities hereunder.

COUNTY and its officers, employees, and agents shall be included as "Additional Insureds" on all policies and a copy of the endorsement evidencing that the COUNTY has been added as a named additional insured on the policy must be attached to the certificate of insurance. The limit of liability of said policy or policies shall not be less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage, \$2,000,000 in the aggregate.

Personal injury coverage should also be in the amount of \$1,000,000 per person and \$2,000,000 in the aggregate. Said policy or policies shall contain a provision that such insurance as is afforded by the policy shall be primary and contributory to the full limits stated in the declarations, and if COUNTY has other valid and collectible insurance for a loss covered by this policy, COUNTY'S other insurance shall be excess only. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

C. Property Insurance. The Property Insurance shall provide all risk property coverage on a replacement cost basis for the Facility and Site. COUNTY shall be included as an additional insured on any Property Insurance policy. Said Property Insurance shall contain an agreement under which the insurance company or companies supplying said policy shall notify COUNTY in writing at least thirty (30) days prior to cancellation of all or any part of such policy.

In the event of any loss to any property that is subject to this Agreement which is caused by any occurrence that is covered by such all risk property insurance, LESSEE shall be responsible for any payment of any deductible.

All property insurance carried by LESSEE shall include provisions denying to the insurer, acquisition by subrogation of rights of recovery against the other party to the extent the rights have been waived by the insured prior to occurrence of loss or injury.

21. **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.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement. COUNTY shall notify LESSEE in writing of a breach of this Section 21, NONDISCRIMINATION, and LESSEE shall have thirty (30) days upon receipt of written

notification to cure such breach. In the event LESSEE does not cure a breach after the 30-day cure period, COUNTY, in addition to any other remedies provided by law, shall have the right to terminate this Agreement and the interest hereby created without liability therefore.

22. **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 caused by LESSEE'S use and occupancy, except for any pre-existing contamination discovered prior to the Effective Date, unless LESSEE is responsible for any pre-existing contamination, LESSEE shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor. 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, 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.

Immediately upon completion of the installation of LESSEE'S Facility, LESSEE shall perform testing with LESSEE'S Facility operating at maximum output to measure Radiofrequency ("RF") levels in and around the area on the Property that is within a three hundred feet (300') radius from LESSEE'S Site. The results of the RF testing shall be furnished by LESSEE to COUNTY. IF LESSEE makes any changes or modifications to its antennae or radio equipment, LESSEE shall immediately upon completion of such modifications, perform testing in the same manner described above to measure RF levels. LESSEE shall be responsible for the RF safety monitoring of all persons in the vicinity of the Site and Facility to ensure that those persons are not exposed to RF levels that exceed the maximum exposure limits determined by the FCC.

In the event any COUNTY employees, or third persons contracted by COUNTY are working on the Building within the area of the rooftop of the Building that is marked off as a hazard zone, which zone shall be defined as twenty feet (20') in front of any antennas installed and ten feet (10') behind any antennas and ten feet (10') from each side of the antennas, then COUNTY shall have the right to require LESSEE to temporarily shut down the antenna sector while such work is being performed inside the hazard area adjacent to the subject antennas. In the event, COUNTY requests a temporary shut-down under this paragraph, COUNTY shall provide LESSEE with at least 24 hours prior notice. COUNTY shall use its best reasonable efforts to minimize its requests under this paragraph.

23. **TOXICS:** LESSEE shall not manufacture or generate hazardous wastes on or in the Facility, Site, Building, 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, Building, 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.

24. **COMPLIANCE WITH THE LAW:** LESSEE shall comply with all local, County, State, and Federal laws, rules, and regulations affecting the Site, Facility, Building, or property now or hereafter in effect. In particular, LESSEE'S occupancy shall at all times be subject to County rules, regulations, and restrictions per Santa Barbara County Code, Chapter 26.

25. **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
Facilities Services Division
1100 Anacapa Street
Santa Barbara, CA 93101-6065
Attn: Real Property Manager
(805) 568-3070

LESSEE: Sprint PCS Assets, L.L.C.
4683 Chabot Drive
Pleasanton, CA 94588
Attn: Property and Leasing
(925) 468-3093

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 mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

26. **DEFAULT:** Except as otherwise required herein, should LESSEE at any time be in material default hereunder with respect to any covenant contained herein, 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 such default shall reasonably take more than thirty (30) calendar days in which case LESSEE shall notify COUNTY and proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure. Reciprocally, except as otherwise required herein,

if COUNTY should at any time be in material default hereunder with respect to any covenant contained herein, LESSEE shall give 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, LESSEE shall have the option to terminate this Agreement by providing written notification to COUNTY; unless, however, the cure of such default shall reasonably take more than thirty (30) calendar days in which case COUNTY shall notify LESSEE and proceed with all due speed to cure the default and shall have a reasonable time effectuate its cure.

27. **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 or breach including but not limited to the following:

A. The nondefaulting party may waive the default or breach in accordance with Section 28, **WAIVER**, herein below.

B. The nondefaulting party may maintain this Agreement in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.

C. Where LESSEE is the nondefaulting party, LESSEE may terminate the Agreement and surrender use of the Site.

D. Where COUNTY is the nondefaulting party, COUNTY may terminate the Agreement and LESSEE shall vacate the Site within 30 days of written notice from COUNTY.

28. **WAIVER:** It is understood and agreed that any waiver, express or implied of any term of this Agreement shall not be, nor construed to be a waiver of any subsequent breach of a like kind or of any other provision of this Agreement.

29. **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.

30. **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. Upon the failure of LESSEE to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement and the expiration of the cure period as provided in Section 26, **DEFAULT**; or

C. In the event LESSEE is found to be in non-compliance with Exhibits "C", "D", "F" or "G" of this Agreement and such non-compliance is not resolved in a timely fashion.

D. In the event LESSEE reasonably and in good faith determines that the Site is no longer technologically feasible for its intended use, provided that LESSEE provides COUNTY with a reasonable basis in writing for its determination. If such determination is acceptable to COUNTY, then such termination for technological reasons shall be effective 12 months from the date upon COUNTY'S receipt of written notice which shall be in writing and delivered by certified mail, return receipt requested. Notwithstanding the aforementioned, LESSEE shall have the right to

terminate this Agreement with 180 days written notice to COUNTY in the event of any governmental take back of licenses or permits that would eliminate LESSEE'S ability to use the Site, unless the revocation of licenses or permits is the fault of LESSEE.

31. **DESTRUCTION:** If the Facility or the Site is partially or totally destroyed by fire or other casualty, LESSEE may rebuild its Site and Facility in the original location of the Site without COUNTY'S consent. If, however, LESSEE selects a new location on the Building to rebuild the Site, COUNTY'S consent to the new location is required and the new location shall not interfere with the COUNTY'S intended use of the Property at the time that such destruction occurs. If LESSEE rebuilds its Site in a new location, then this Agreement shall be amended to show the new location.

32. **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 rate in effect on the expiration date.

33. **AGENCY DISCLOSURE:** 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.

34. **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.

LESSEE, in accordance with the provisions in Section 11, **CONSTRUCTION AND IMPROVEMENTS/TITLE**, shall remove all personal property prior to the expiration or termination of this Agreement.

35. **CAPTIONS:** 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.

36. **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.

37. **CERTIFICATION OF SIGNATORY:** 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.

38. **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.

39. **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.

40. **CONDEMNATION:** In the event the Building 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 possession of the Site or partial possession of the Site is obtained by a public agency 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 possession.

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

41. **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.

42. **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.

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 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.

SIGNATURE PAGE TO FOLLOW

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Project: Sprint PCS at Betteravia
APN: 128-085-042
Folio: EU 3336
Agent: JJS

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: _____
Chair, Board of Supervisors

By: _____
Deputy

Effective Date: _____

APPROVED AS TO ACCOUNTING
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

"LESSEE"
Sprint PCS Assets, L.L.C.,
a Delaware limited liability company,

By: _____
Deputy

By: _____

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____
Name and Title

By: _____
Deputy

Tax I.D. No. _____

APPROVED:

Ronnie Thompson
Director of Employee University

APPROVED:

APPROVED AS TO INSURANCE FORM:

Ronn Carlentine, SR/WA
Real Property Supervisor

John A. Forner
Management Specialist/Risk Manager