

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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AMENDED AND RESTATED COMMUNICATIONS SITE LEASE NO. 29392

29392

THIS AMENDED AND RESTATED COMMUNICATIONS SITE LEASE NO. 29392 ("Lease") is made and entered into as of December 14, 2022 (the "Effective Date"), by and between the CITY OF LONG BEACH, a municipal corporation ("City"), pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on December 13, 2022, and SPRINT PCS ASSETS, L.L.C., a Delaware limited liability company, with its principal offices at 12920 SE 38th St, Bellevue, Washington 98006 ("Lessee").

WHEREAS, City and Lessee (the "Parties") executed a Communications Site Lease No. 29392 dated October 1, 2005, wherein City agreed to lease to Lessee property owned by City for the purpose of Lessee's operation of a communications facility and related equipment and structures; and

WHEREAS, the parties executed the First Amendment to Communications Site Lease No. 29392 dated November 1, 2010 wherein the term of the Lease was extended for a term of five (5) years; and

WHEREAS, the Parties executed the Second Amendment to Communications Site Lease No. 29392 dated September 4, 2015 wherein the term of the Lease was extended for a term of five (5) years; and

WHEREAS, Lessee's predecessor in interest initially declined to exercise its renewal option; and

WHEREAS, Parties now intend to reinstate Communications Site Lease No. 29392 under the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions herein contained, the Parties agree as follows:

1. **RECITALS:** This Lease is made with reference to the following facts and objectives:

A. Lessee's proposal for the operation of an existing

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communications facility and related equipment and structures, including certain improvements thereto ("Tower Facility"), was approved by City, and City is willing to permit Lessee to improve and operate the Tower Facility on the terms, covenants and conditions set forth in this Lease.

2. PROPERTY AND ACCESS:

A. City leases to Lessee and Lessee accepts a lease of the premises consisting of approximately four hundred (400) square feet as shown on Exhibit "A" (the "Premises"). The Premises is situated within the Property owned by City, which is located at 1150 E. 4th Street, Long Beach, California, and commonly known as the Senior Center.

B. During the term of this Lease, City also grants to Lessee a right of ingress and egress, to the extent reasonably practicable seven (7) days per week and twenty-four (24) hours per day, over those portions of the Property necessary to access the Premises.

3. TERM:

A. The current Renewal Term shall be for five (5) years, commencing upon the date of full execution of the Amended and Restated Communications Site Lease, or January 1, 2023, whichever comes first (the "Commencement Date"), and shall terminate on the fifth (5th) anniversary of the Commencement Date. Lessee may extend the current Renewal Term of this Lease for four (4) additional and consecutive periods of five (5) years each (each, a "Renewal Term"), by giving City written notice of its intent to extend the term at least six (6) months prior to the end of the then-current Renewal Term, upon which an amendment to this Lease shall be executed by City and Lessee to memorialize the Renewal Term. Notwithstanding the foregoing, either party may terminate this Lease at any time without any penalty or further liability as follows:

i. upon a default of any covenant or term hereof by the other party which default is not cured within sixty (60) days of receipt of

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written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues such cure to completion within one hundred eighty (180) days, the non-defaulting party shall no longer be entitled to declare a default;

ii. upon thirty (30) days' written notice by Lessee to City if Lessee is unable to obtain, maintain, renew or reinstate any agreement, permit or other Governmental Approvals (defined below) necessary for the operation of the Tower Facility or for Lessee's permitted use; or

iii. upon thirty (30) days' written notice from Lessee to City if the Premises is or becomes unsuitable, in Lessee's reasonable judgment, for use as a wireless communications facility by Lessee or by Lessee's licensee(s) or sublessee(s).

B. In the event Lessee terminates this Lease other than as a result of a default by City, then Lessee shall pay a termination fee ("Termination Fee") equal to three (3) months of the then-current Annual Rent (defined below) payment, subject to the provisions of Section 19.

4. USE OF PREMISES:

A. Lessee's right to use the Premises is contingent upon its obtaining and maintaining all certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority (collectively "Governmental Approvals").

B. Lessee is authorized to use the Premises for the operation of a Tower Facility that provides antenna locations for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of equipment, fixtures, cables, and accessories which may include support structures, associated antennas, shelters, cabinets and fencing, related to such use and required for the

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1 secure use of the Premises. The Premises shall not be used for any other
2 purpose without the prior written consent of the Director of Parks, Recreation and
3 Marine ("Director").

4 i. Lessee shall not do, bring or keep anything in or about
5 the Premises that will cause a cancellation of or increase the rate of any
6 insurance covering the Premises.

7 ii. Lessee shall not use the Premises in any manner that
8 will constitute waste or nuisance.

9 iii. The limitation on use set forth in subsections 4.B.i. and
10 4.B.ii. shall not prevent Lessee from bringing, keeping or using, on or about
11 the Premises such materials, supplies, equipment and machinery as are
12 necessary or customary in the operation of the permitted use; provided
13 however, Lessee, in handling hazardous substances or wastes at the
14 Property, shall fully comply with all laws, rules, regulations and orders of
15 governmental agencies having jurisdiction.

16 C. Prior to subleasing the Premises, Lessee or its sublessee
17 shall conduct a radio frequency interference ("RFI") study. Such a study shall
18 show that the intended sublessee use will not cause harmful interference with any
19 then-existing communications facilities. A copy of the study shall be submitted to:
20 City of Long Beach, Department of Parks, Recreation and Marine, ATTN:
21 Contract Management, 2760 North Studebaker Road, Long Beach, CA-90815. If
22 the study finds that there is a potential for interference that cannot be reasonably
23 remedied, City may require that Lessee terminate the sublease.

24 D. At all times in its use and occupancy of the Premises and in
25 the conduct of its operations thereon, Lessee, at its cost, shall comply with all
26 applicable federal, state, regional and local laws, ordinances and regulations
27 including, but not limited to the City Charter, the Long Beach Municipal Code,
28 Tariff No. 4 and regulations of the Federal Communications Commission ("FCC").

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1 Lessee shall obtain all permits required for any construction to the Tower Facility,
2 any improvements on the Premises and for the conduct of its operations thereon.
3 Lessee shall comply with applicable provisions of the Americans with Disabilities
4 Act (42 U.S.C.A. § 12101, et seq.) ("Act") and regulations promulgated pursuant
5 thereto in Lessee's use of the Premises and operations conducted thereon.
6 Additionally, as between Lessee and City, Lessee shall be solely responsible for
7 assuring that the Premises are in compliance with applicable provisions of said
8 Act and related regulations and shall hold City harmless from any and all claims
9 of failure of the Premises to comply with the Act and/or related regulations.

10 E. City shall not be liable for interruptions of service caused by
11 strikes, lockouts, facility closures, losses of accessibility, telephone and power
12 failures, governmental acts, and any other condition beyond the control of City.

13 5. RENT:

14 A. Lessee shall pay to City, as rental for the use of the
15 Premises, without deduction, setoff, prior notice or demand, an initial annual
16 rental payment of Forty-Five Thousand Dollars (\$45,000) ("Annual Rent") within
17 thirty (30) days after the execution of this Lease by both parties. Thereafter,
18 Annual Rent shall be payable in advance on or before the beginning of each
19 Lease Year (as defined below).

20 B. Annual Rent shall be adjusted as of the first (1st) day of the
21 second Lease Year and each Lease Year thereafter during the current Renewal
22 Term and each Renewal Term (if applicable), by increasing the then-current
23 Annual Rent by four percent (4%). The phrase "Lease Year" shall mean that
24 twelve (12) consecutive calendar month period commencing on the
25 Commencement Date and each anniversary thereafter.

26 C. All delinquent installments of rental and other payments due
27 the City shall bear interest at the maximum rate allowed by law. Rental payments
28 are delinquent if remaining unpaid on the thirtieth (30th) calendar day after the

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first day of a Lease Year.

D. In addition to the Annual Rent, Lessee shall pay to City on a monthly basis forty percent (40%) of any rents (the "Monthly Collocation Fee") actually received by Lessee for each sublease, license or other collocation agreement (each of the foregoing, a "Collocation Agreement") for the use of any portion of the Premises entered into by and between Lessee and a third-party (any such third party, a "Collocator"). Notwithstanding the foregoing, City shall not be entitled to receive any portion of any sums paid by a Collocator to (i) reimburse Lessee for repairs to the Premises or structural enhancements to the Tower Facility which have been made by Lessee for the benefit of the proposed Collocator, or (ii) reimburse Lessee in whole or in part for costs associated with the development, operation or maintenance of the Premises or the Tower Facility. In the event that any sums collected by Lessee pursuant to 5(D)(i) or 5(D)(ii) above are in lieu of rent payment to be made to Lessee, then the Monthly Collocation Fee shall apply to such payments and be due to City.

E. The initial payment of the Monthly Collocation Fee shall be due within thirty (30) days of receipt by Lessee of the first collocation payment paid by the Collocator. In the event a Collocation Agreement expires or terminates, Lessee's obligation to pay the Monthly Collocation Fee for such Collocation Agreement shall automatically terminate upon the date of such expiration or termination.

F. Lessee shall provide City (upon written request of City which shall not exceed once annually except if City has a reasonable belief that any payments owed pursuant to this subsection are incorrect, at which time City shall not be limited to once-per-year requests) with a summary of the financial records of Lessee relating solely to the rent, license fees or other recurring payments received by Lessee from any Collocator. Lessee shall retain all such financial records and related documents for a period of at least three (3) years and shall

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make them reasonably available to City upon advance written request.

G. City and Lessee acknowledge that Lessee may sublease the management of its Tower Facility to a third party (its "Agent"), in which case Agent shall be bound by all terms and conditions of this Lease. In addition, Agent shall execute any and all documents between City and Agent to formalize the receipt of Annual Rent and/or Monthly Collocation Fees by City from Agent.

6. CONSTRUCTION OF IMPROVEMENTS AND ALTERATIONS:

A. Lessee shall not construct or make any improvements or alterations to the Premises without City's prior consent, which shall not be unreasonably withheld, conditioned or delayed pursuant to the City's Ordinance relating to wireless communications facilities. Any Improvement or alteration to the Premises shall be constructed or erected and installed by Lessee in accordance with plans and specifications approved in writing by the Director of Development Services, Planning and Building Bureau or his or her designee and shall be subject to such conditions and limitations as may be set forth in the permit issued by the City authorizing the work contemplated by this Lease. Within thirty days (30) from full execution of this Lease, Lessee shall submit a list of operating frequencies to the following address: The Department of Parks, Recreation and Marine, ATTN: Contract Management, 2760 N. Studebaker Road, Long Beach, CA 90815.

B. On or before the date of commencement of any new construction to the Tower Facility or any other structure or material improvement on the Premises excluding "like kind" repairs or improvements, Lessee shall file or cause to be filed with City a performance bond and a labor and material payment bond executed by Lessee or Lessee's contractor, as principal, and by a surety authorized to do business in the State of California, as surety, conditioned upon the contractor's performance of its construction contract with Lessee in a form and with a surety reasonably acceptable to City. The performance bond

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1 shall name or be endorsed to name City as a joint obligee with Lessee and/or
2 Lessee's lender. City shall either approve or disapprove of any such proposed
3 bond within ten (10) business days of City's receipt thereof. The performance
4 bond shall be in the amount and provide a penalty of one hundred percent (100%)
5 of the cost of the improvements to be constructed by Lessee and shall remain in
6 effect until the date of completion of construction of the Tower Facility. The
7 payment bond shall be in the amount and provide a penalty of one hundred
8 percent (100%) of the valuation of the improvements to be constructed by Lessee
9 and shall remain in effect until the expiration of the period for filing a claim of lien
10 or, if a claim of lien is filed, the expiration of the period for filing an action to
11 foreclose such lien, or until the Premises are freed from the effect of such claim
12 of lien and any action brought to foreclose such lien or the lien is otherwise
13 discharged.

14 C. Subject to Section 6.A, Lessee shall have the right to do all
15 work necessary to prepare, add, maintain and alter the Premises for construction
16 and further development of the Tower Facility and to install utility lines and
17 transmission lines connecting antennas, transmitters, receivers and other
18 equipment. Licensed and bondable contractors shall perform all of Lessee's
19 construction and installation work at Lessee's sole cost and expense in a good
20 and workmanlike manner.

21 D. City shall make every reasonable attempt to provide access
22 to the Premises twenty-four (24) hours a day, seven (7) days a week, to Lessee's
23 employees, agents, subtenants, contractors and subcontractors at no charge to
24 Lessee and shall provide Lessee with the telephone number of maintenance staff
25 assigned by the Manager of the Maintenance Operations Bureau to respond to
26 emergency situations at the Premises. City hereby grants to Lessee such rights
27 of ingress and egress over City's Property as may be necessary and consistent
28 with the authorized use of the Premises.

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1 E. Lessee shall have the right to install utilities, at Lessee's
2 expense, and to improve the present utilities on or near the Premises (including
3 emergency or back-up batteries or transportable generator power). Subject to
4 City's reasonable approval of the location of said utilities, not to be unreasonably
5 withheld, conditioned or delayed, Lessee shall have the right to place utilities on
6 (or to bring utilities across) the Property in order to service the Premises and the
7 Tower Facility.

8 7. RADIO FREQUENCY EMISSION SAFETY: Lessee shall at all times
9 comply with applicable regulations adopted by the FCC regarding limits to human exposure
10 to electromagnetic emissions. Lessee shall pay for a Prediction RFE Study, carried out by
11 an independent and qualified professional. The study shall analyze the "worst" case RF
12 fields that could exist at the Premises taking into account all existing and/or proposed
13 transmitters operating at a one hundred percent (100%) duty-cycle. A copy of the study
14 shall be submitted to: The Department of Parks, Recreation and Marine, ATTN: Contract
15 Management, 2760 N. Studebaker Road, Long Beach, CA 90815, within sixty (60) days
16 from full execution of this Lease.

17 8. INTERFERENCE:

18 A. Lessee shall operate the Tower Facility in such a manner
19 that will not cause harmful interference with the authorized communications
20 configurations equipment and uses, which exist on the Property as of the
21 Commencement Date. Lessee's operations on the Premises shall not cause
22 harmful interference with any of the City's communications operations on a
23 citywide basis, either current or future. All operations by Lessee shall be lawful
24 and in compliance with all applicable FCC requirements.

25 B. Under no circumstances shall the operations or services at
26 the Tower Facility interfere in any way or manner with the use or operation of
27 public safety radio communications. If, in the reasonable discretion of the City,
28 Lessee is deemed to interfere with the use or operation of the City's public safety

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1 radio communications, City, without liability to Lessee, shall have the right to
2 require Lessee to temporarily cease and shut down Lessee's facilities and
3 operations until such interference is eliminated. In the event the Tower Facility is
4 causing interference to public safety radio communications during an emergency
5 (which shall be defined as a situation creating a danger of injury or death to
6 persons or damage to property), Lessee shall respond to City's notice of such
7 interference within twelve (12) hours after receipt of same. In connection with the
8 foregoing, City shall contact Lessee's Network Operations Center at (800) 832-
9 6682 or Lessee's local market property management department at (877) 231-
10 5447 to notify Lessee of such interference.

11 C. The City makes no representation or warranty as to the area
12 of communications coverage to and from the Tower Facility. Lessee
13 acknowledges and agrees that Lessee's signal is subject to degradation of
14 transmission and performance from natural and man-made phenomena,
15 including but not limited to, solar flares, so-called "slip" interference, power lines
16 and interference from users of the same and other frequencies. City shall not be
17 responsible for interference caused by any such sources or any other source
18 beyond the control of the City.

19 D. An RFI study shall be conducted whenever a new emitter is
20 added to the Tower Facility, whenever radiated power is increased from an
21 emitter, whenever an emitter is relocated or modified; or when an emitter's
22 radiation pattern changes. The study shall identify any potentially affected user
23 and shall be submitted as part of the formal permitting process through the
24 Department of Development Services with a copy to the Department of Parks,
25 Recreation and Marine, ATTN: Contract Management, 2760 N. Studebaker
26 Road, Long Beach, CA 90815, immediately upon completion and prior to
27 anticipated activation of change. Lessee shall bear the cost of such a study.

28 E. AIR SAFETY: Lessee acknowledges that under FCC and

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1 Federal Aviation Administration ("FAA") rules, regulations and orders, it has
2 separate responsibilities with respect to maintenance, identification, marking and
3 lighting of its tower, which responsibilities must be fulfilled by it and cannot be
4 delegated or assigned to any other party. Lessee will maintain its Tower Facility
5 at the Premises in full compliance with all applicable FCC and FAA AIR safety
6 identification, marking and lighting requirements.

7 9. MAINTENANCE AND REPAIR:

8 A. Lessee, at its cost shall keep and maintain the Premises,
9 including without limitation the Tower Facility and all of Lessee's buildings,
10 structures, and other improvements on the Premises in reasonably good repair
11 and condition and shall perform all necessary maintenance including landscaping
12 installed by Lessee. Lessee shall at its sole cost and expense, keep and maintain
13 all natural and artificial drainage channels now located or hereafter constructed
14 on the Premises free and unobstructed. Should Lessee fail to do so, City may,
15 after ten (10) days' notice to Lessee, make the necessary correction and the
16 reasonable cost thereof shall be paid by Lessee within thirty (30) days after
17 receipt of City's statement of such costs and reasonable supporting
18 documentation.

19 B. Should Lessee fail to make any repairs or perform required
20 maintenance of the Tower Facility within thirty (30) days after receipt or notice
21 from City to do so, City may, but shall not be obligated to, make such repairs or
22 perform such maintenance. Lessee agrees to reimburse City for the reasonable
23 cost thereof within thirty (30) days after receipt of City's invoice therefore and
24 reasonable supporting documentation. City's cost shall include, but not be limited
25 to, the reasonable cost of maintenance or repair or replacement of property
26 neglected, damaged or destroyed for which Lessee is responsible, including
27 direct and allocated costs for labor, materials, supervision, supplies, tools, taxes
28 and transportation. In the event Lessee commences to diligently make such

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repairs or shall begin to perform the required maintenance within the initial thirty (30) day period, City shall refrain from making such repairs or performing required maintenance. The making of any repair or the performance of maintenance by City, which is the responsibility of Lessee, shall in no event be construed as a waiver of Lessee's duty or obligation to make future repairs or perform required maintenance as provided in this Lease.

C. Lessee, at its cost, further agrees to keep and maintain all of the Premises in a safe, clean, and sanitary condition under all applicable federal, state, local and other laws, rules, regulations and orders. No offensive refuse, matter, nor any substance which constitutes any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health shall be permitted to be in or remain on the Premises and Lessee shall prevent such material or matter from accumulating upon the Premises.

D. All fire protection sprinkler systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems or appliances which may be installed on the Premises shall be maintained by Lessee, at its cost in an operative condition at all times. All repairs and servicing shall be made in accordance with the applicable provisions of the Long Beach Municipal Code, and all revisions thereto.

E. Lessee shall promptly notify the Director in the event of any release of contamination or hazardous materials onto the Premises. Lessee, at its cost, shall promptly remove and/or treat and dispose of all contamination or hazardous materials caused by Lessee or for which Lessee is responsible, in accordance with regulations and orders of governmental agencies having jurisdiction and restore the Premises to the condition they were in prior to the release of the contamination or hazardous materials to the extent practicable. Lessee shall furnish the Director with copies of all waste manifests. Notwithstanding the foregoing, Lessee shall not be responsible for the cost of

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1 such remediation if Lessee can establish to the reasonable satisfaction of City
2 that remediation either (i) is required as a result of contamination or hazardous
3 materials existing on, in or under the Premises within thirty (30) days from full
4 execution of this Lease, or (ii) is not as a result of the use of contaminated or
5 hazardous materials on the Premises by Lessee, its agents, consultants,
6 contractors or employees.

7 10. UTILITIES: Lessee, at its cost, shall make arrangements for and pay
8 for all utility installations and services furnished to or used by it, including without limitation
9 gas, water, and trash collections and for all connection charges. City agrees to reasonably
10 cooperate with Lessee in obtaining such utility services.

11 11. TAXES: Except where contested in good faith in a court of appropriate
12 jurisdiction, Lessee shall pay, prior to delinquency, all lawful taxes, assessments and other
13 governmental or district charges that may be levied upon its property and improvements of
14 any kind located on the Premises. Lessee recognizes and understands that this Lease
15 may create a possessory interest subject to property taxation and that Lessee may be
16 subject to the payment of property taxes and assessments levied on such interest.
17 Payment of any such possessory interest tax or assessment shall not reduce any
18 compensation due City hereunder.

19 12. MECHANICS' LIENS: Lessee shall pay all costs for construction done
20 by it or caused by it to be done on the Premises. Lessee shall keep the Premises free and
21 clear of all mechanics' liens resulting from construction done by or for Lessee. Lessee shall
22 have the right to contest the correctness or the validity of any such lien if, immediately on
23 demand by City, Lessee procures and records a lien release bond issued by a corporation
24 authorized to issue surety bonds in California in an amount equal to one and one-half (1½)
25 times the amount of the claim of lien. The bond shall meet the requirements of Civil Code
26 Section 3143 and shall provide for the payment of any sum that the claimant may recover
27 on the claim (together with the costs of suit, if claimant recovers in the action). Lessee
28 agrees that it will at all times save City free and harmless and indemnify City against all

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1 claims for labor or materials in connection with the construction, erection or installation of
2 Lessee's improvements made upon the Premises, or from additions or alterations made
3 thereto, or the repair of the same, by or for Lessee, and the costs of defending against any
4 such claim, including reasonable attorneys' fees.

5 13. INDEMNIFICATION:

6 A. Lessee shall defend, indemnify, hold, protect and save
7 harmless the City of Long Beach, its officials, commissioners, employees, and
8 agents ("indemnified parties") from and against any and all actions, suits,
9 proceedings, claims, demands, damages, losses, liens, costs, expenses or
10 liabilities of any kind or nature whatsoever ("claims"), which may be brought,
11 made, filed against, imposed upon or sustained by the indemnified parties, or any
12 of them, alleging injury to or death of persons or damage to property, including
13 property owned by or under the care and custody of Lessee and that such injury,
14 death or damage arises from or is attributable to or caused, directly or indirectly:

15 i. By the use of the Property or the Premises or any
16 equipment or materials located thereon, or from operations conducted
17 thereon by Lessee, its agents, employees or contractors, or by any person
18 or persons acting on behalf of Lessee and with Lessee's knowledge and
19 consent, express or implied of City;

20 ii. By the condition or state of repair and maintenance of
21 the Premises;

22 iii. By the construction, improvement or repair of the
23 improvements and facilities on the Premises by Lessee, its officers,
24 employees, contractors, or agents or by any person or persons acting on
25 behalf of Lessee and with Lessee's knowledge and consent, express or
26 implied; or

27 iv. By Lessee's failure or refusal to comply with the
28 provisions of Section 6300, et seq. of the California Labor Code or any

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1 federal, state or local regulations or laws pertaining to the safety of the
2 Premises or of equipment located upon the Premises.

3 City shall notify Lessee of any claim, tender its defense to Lessee, and shall
4 assist Lessee as may reasonably be requested in the defense thereof. Upon such
5 notification and tender, Lessee shall have independent duties to defend such claim, and to
6 indemnify the indemnified parties except to the extent that such injury, death or damage is
7 determined by a Court of competent jurisdiction to have been caused by the active
8 negligence or willful misconduct of the indemnified parties. Payment of a claim by an
9 indemnified party shall not be a condition precedent to recovery under this indemnity.

10 B. To the extent permitted by law, City agrees to indemnify, defend and
11 hold Lessee harmless from and against any and all injury, loss, damage or liability (or any
12 claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees
13 and court costs) arising directly from the actions or failure to act of City, its employees or
14 agents, or City's breach of any provision of this Lease, except to the extent attributable to
15 the negligent or intentional act or omission of Lessee, its employees, agents or
16 independent contractors.

17 14. INSURANCE: Nothing in this Section shall prevent Lessee from
18 requiring its sublessees, or any of them, or any other third party, to provide the required
19 EMF liability insurance in place of Lessee's provision of such insurance, nor prevent
20 Lessee, its sublessees, or any of them, in place of Lessee, from taking out EMF liability
21 insurance under a blanket insurance policy or policies provided that the protection afforded
22 Lessee and City under any policy of blanket insurance shall be no less than that which
23 would have been afforded under a separate policy or policies relating only to such
24 coverage.

25 A. As a condition precedent to the effectiveness of this Lease,
26 and without limiting Lessee's obligations of indemnity, Lessee at no cost to City
27 shall procure and maintain in full force and effect during the term of this Lease
28 the following levels of insurance:

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i. Commercial general liability insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG0001 (or its substantial equivalent), with limits of Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate if commercially available. This insurance shall include coverage for electric and magnetic fields ("EMF") liability (if commercially available and reasonable), explosion, collapse and underground hazards, and shall not exclude or limit coverage for contractual liability or cross-liability protection, subject to standard policy provisions and exclusions.

ii. Automobile liability insurance with coverage at least as broad as Insurance Services Office Form CA0001 (or its substantial equivalent) covering automobile liability code 1 (any auto), with a limit of One Million Dollars (\$1,000,000.00) each accident.

iii. Workers' compensation insurance, as required by the State of California and employer's liability insurance, with a limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and disease – each employee, disease policy limit.

iv. Special perils property insurance in an amount sufficient to cover the full replacement value of Lessee's personal property, improvements, and equipment on the Premises. Said insurer of such coverage shall agree to waive its right of subrogation against the City.

B. Each policy shall be from a company or companies with a current A.M. Best's rating of no less than A MINUS:VII and eligible to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance code or any federal law.

C. Except in the event of non-payment of premium, Lessee shall provide at least thirty (30) days written notice of cancellation of any required

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coverage that is not replaced to the Director by regular mail.

D. The policy or policies required under subsections 14.A.i. and 14.A.ii. above shall also be endorsed to provide substantially as follows:

I. That the Indemnified Parties, while acting within the scope of their authority, shall be included as additional insureds with regard to liability and defense of suits or claims arising from the operations, products, and activities performed by or on behalf of the named insured. City's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Lessee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed Lessee's indemnification obligation under this Lease, if any.

ii. That such insurance is primary as relates to Lessee operations and any other insurance, deductible, retention or self-insurance maintained by the Indemnified Parties shall not contribute with such primary insurance.

iii. That in the event a claim is made or a suit is filed against an insured (whether named or additional), including a claim or suit by another insured (whether named or additional), the policy shall cover the insured against whom the claim is made or suit is filed in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

iv. Shall include contractual liability coverage.

v. Any failure by the named insured to comply with reporting provisions of the policy or breaches or violation of warranties shall

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not affect coverage provided to the indemnified parties, provided that such failure is not due to the acts of the additional insureds.

Acceptable blanket additional Insured wording in Lessee's policy may be deemed as an acceptable substitute for an endorsement, at City's discretion.

E. [Reserved].

F. If any of the required insurance is provided on a "claims-made" basis, any "prior acts" coverage or "retroactive date" on such insurance and all subsequent insurance shall be as the Commencement Date. Upon expiration or termination of coverage of required insurance, Lessee shall procure and submit to city evidence of "tail" coverage or an extended reporting coverage period endorsement or renew for the period of at least two (2) years from termination or expiration of this Lease.

G. Lessee shall deliver certificates and additional Insured blanket endorsements ("Evidence of Insurance") to the email address on file for City for approval as to sufficiency and to the City Attorney for approval as to form, which approvals shall not be unreasonably withheld, conditioned or delayed. With the expiration of any such policy, Evidence of Insurance showing that such insurance coverage has been renewed or extended shall be sent to the email address on file for City, without a lapse in coverage. Lessee agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and Evidence of Insurance has not been submitted to the City.

H. Lessee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Lease.

I. Lessee shall require its independent contractors to provide the same insurance under the same terms and required by this Lease.

15. **SIGNS:** No signage shall be allowed on the Tower Facility, except as required for public safety purposes, by the FCC, or by any other governmental agency

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1 having jurisdiction over the Property. Upon the expiration or termination of this Lease,
2 Lessee, at its cost, shall remove promptly and to the satisfaction of the Director any and all
3 signs and placards placed by it upon the Premises.

4 16. DEFAULT: The occurrence of any of the following shall constitute a
5 default without any obligation to refund any portion of the Annual Rent, or the Monthly
6 Collocation Fee:

7 A. Failure by Lessee to pay rent when due, if the failure
8 continues for thirty (30) days after City has given written notice to Lessee;

9 B. Failure by Lessee to maintain its permits and/or licenses to
10 provide mobile/wireless telecommunications services and Lessee fails to
11 reinstate such permits and/or licenses within the periods permitted by the
12 applicable governmental agency;

13 C. The filing by or against Lessee or a petition to have Lessee
14 adjudged a bankrupt or a petition for reorganization or arrangement under any
15 law relating to bankruptcy, unless released within sixty (60) days thereafter;

16 D. The appointment of a trustee or receiver to take possession
17 of substantially all of Lessee's assets located at the Premises or of Lessee's
18 interest in this Lease;

19 E. Any attachment where such seizure is not discharged within
20 thirty (30) days thereafter; or

21 F. The filing of any tax lien against Lessee not discharged
22 within thirty (30) days thereafter; or

23 G. Failure by Lessee to perform any other provision of this
24 Lease if the failure to perform is not cured within (30) days after notice has been
25 given by City; provided, if the default cannot reasonably be cured within thirty (30)
26 days, Lessee shall not be in default if Lessee commences to cure the default
27 within the thirty (30) day period and diligently and in good faith continues to cure
28 the default.

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H. Notices given under this Section 16 shall specify the alleged default and the applicable Lease provisions and shall demand that Lessee perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time or that Lessee quit the Premises. No such notice shall be deemed forfeiture or a termination of this Lease unless City so elects in its notice to Lessee.

I. City may terminate this Lease at any time upon sixty (60) days written notice to Lessee, in the event that the signal from the Tower Facility materially interferes, as objectively determined by a qualified independent engineer, with City's normal and customary operations and maintenance of its facilities provided, however, that City has first given Lessee written notice of such interference and Lessee is unable to correct or cease such interference within thirty (30) days after receipt of written notice of such interference.

J. The remedies of City shall be cumulative and in addition to any other remedies available at law or in equity.

K. For the purpose of this Section, each of the covenants, conditions and agreements imposed upon or to be performed by Lessee shall, at the option of the City, be deemed to be either covenants or conditions, regardless of how designated in this Lease.

L. The following will be deemed a default by the City and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within forty-eight (48) hours after receipt of written notice of such default; or (ii) City's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if City has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable

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control of the City. If the City remains in default beyond any applicable cure period, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure the City's default and to deduct the costs of such cure from any monies due to the City from Lessee.

17. FORCE MAJEURE:

A. Neither party to this Lease shall be deemed to be in default in the performance of the terms, covenants or conditions of this Lease, if such party is prevented from performing said terms, covenants or conditions hereunder by causes beyond its control, including, without limitation, earthquake, flood, fire, explosion or similar catastrophe, war, insurrection, riot or other civil disturbance, or any other cause reasonably beyond the control of the defaulting party, but excluding strikes or other labor disputes, lockouts or work stoppages. In the event of the happening of any of such contingencies, the party delayed from performance shall immediately give the other party written notice of such contingency, specifying the cause for delay or failure. The party so delayed shall use reasonable diligence to remove the cause of delay, and if and when the occurrence or condition which delayed or prevented the performance shall cease or be removed, the party delayed shall notify the other party immediately, and the delayed party shall recommence its performance of the terms, covenants and conditions of this Lease.

B. If the Premises are not reasonably useable in whole or in part by reason of any cause contemplated by Section 17.A, for a period of one (1) month or longer, Lessee shall have the option to terminate this Lease in its entirety by giving City written notice, at which point all obligations of Lessee shall cease.

C. During any period in which the Premises are not reasonably useable in whole or in part by reason of any cause contemplated by Section 17.A, Lessee shall not be relieved of its obligation to pay any sum already due to City

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at the time of the occurrence.

D. Notwithstanding the foregoing, the occurrence of any cause contemplated by Section 17.A shall not excuse or otherwise delay performance by Lessee of its obligation to obtain all required permits, licenses, approvals and consents from governmental agencies having jurisdiction for the operation and conduct of permitted activities.

18. TERMINATION BY ACTION OF OTHER: In the event the United States of America, the State of California, or any agency or instrumentality of said governments shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises, or any part thereof, or deny Lessee the right to use the Premises as contemplated by this Lease, or if any court shall render a decision which has become final and which will prevent the performance by City of any of its obligations under this Lease, and if such taking, denial or decision substantially impairs the utility of the Premises to Lessee, then Lessee may, at its option, terminate this Lease as of the date of such taking, denial or decision, and all further obligations of the parties shall end, except as to:

A. Any award to which Lessee may be entitled from the condemning authority for loss or damage suffered by Lessee, including but not limited to relocation benefits and Lessee's interest in its building, improvements, trade, fixtures and removable personal property;

B. Obligations of Indemnity which arise under the provisions of Section 13; or

C. Any obligations or liabilities, which shall have accrued prior to the date of taking.

19. TERMINATION BY LESSEE: Lessee shall have the right to terminate this Lease on the occurrence of one or more of the following events:

A. Lessee determines at any time after the Commencement Date that any Governmental Approval or non-governmental license, permit,

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consent, approval, easement or restriction waiver that is necessary to enable Lessee to install and operate the Tower Facility cannot be obtained or renewed at acceptable expense or in an acceptable time period or has been rejected, canceled, has expired, or is otherwise withdrawn or terminated by governmental activity;

B. Lessee determines at any time after the Commencement Date that the Premises are not appropriate or suitable for its operations for economic, environmental or technological reasons, including without limitation, any ruling or directive of the FCC or other governmental or regulatory agency, or problems with signal strength or interference not encompassed herein;

C. Any pre-existing communications facility, or any communications facilities or other structures of any kind now or hereafter located on or in the vicinity of the Property, interferes with the Tower Facility and Lessee is unable to resolve such interference through reasonable feasible means; or

D. City commits a default under this Lease and fails to cure such default within the thirty (30) days of receipt of written notice from Lessee specifying the default, provided that if the period to diligently cure takes longer than thirty (30) days and City commences to cure the default within the thirty (30) day notice period, then City shall have such additional time as shall be reasonably necessary to diligently effect a complete cure.

20. SURRENDER OF POSSESSION:

A. Upon the expiration or earlier termination of this Lease (whether by lapse of time or otherwise), Lessee, at its sole cost, shall restore the Premises to as good a state and condition as the same were upon the date Lessee originally took possession thereof, reasonable wear and tear and damage by the elements excepted, and shall thereafter peaceably surrender possession. In the event this Lease is terminated as a result of a default by City, the Premises shall be restored by City, at its cost.

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B. All improvements of any kind constructed, erected or installed upon the Premises by Lessee ("improvements") shall be and remain the property of Lessee during the term of this Lease. Lessee shall remove the Improvements at its sole cost and expense and shall repair any damage to the Premises caused by such removal. In the event Lessee fails to remove the Improvements within ninety (90) days of the expiration or termination of this Lease, City shall have the right to remove and/or sell and/or destroy the same (subject to the interest of any person other than Lessee therein) at Lessee's expense, and Lessee agrees to pay the reasonable cost of any such removal, sale, or destruction. The obligations contained in this Section shall remain in full force and effect, notwithstanding the expiration or earlier termination of this Lease.

21. RELOCATION ASSISTANCE: Lessee understands and agrees that except as set forth herein, Lessee has no right for relocation assistance or payment from City upon the termination of this Lease or upon the termination of any holdover period. Lessee acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the termination of this Lease as a result of the lapse of time or Lessee's default or upon the termination of any holdover period.

22. ASSIGNMENT:

A. Lessee shall not assign, sublet or otherwise transfer (whether voluntary or involuntary) this Lease or any interest therein without the prior written consent of the Director, which consent, shall not be unreasonably withheld, conditioned or delayed. The Director has authority to approve any such request. Any sublease approved by the City shall be subject to and subordinate to the provisions of this Lease.

B. The provisions of Section 22.A. shall not apply to an

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1 assignment or transfer to an affiliate of Lessee or to any entity which acquires all
2 or substantially all of Lessee's assets in the market defined by the FCC in which
3 the Property is located by reason of a merger, acquisition or other business
4 reorganization. For purposes of this Section 22.B., the term "affiliate" shall mean
5 (i) any company which owns fifty-one percent (51%) or more of the outstanding
6 capital stock of Lessee, or (ii) any company of which Lessee owns fifty-one
7 percent (51%) or more of the outstanding capital stock, or (iii) any company of
8 which fifty-one percent (51%) or more of the outstanding capital stock is owned
9 by a shareholder or group of shareholders who also own at least fifty-one percent
10 (51%) or more of the outstanding capital stock of Lessee. No change of stock
11 ownership, partnership interest or control of Lessee or transfer upon partnership
12 or corporate dissolution of Lessee shall constitute an assignment hereunder. Any
13 assignment or transfer pursuant to Section 22.B. shall only require notice from
14 Lessee to City.

15 23. HOLDING OVER: If Lessee shall hold over after the expiration of this
16 Lease for any cause, such holding over shall be deemed a tenancy from month to month
17 only, upon the same terms, conditions and provisions of this Lease, except that monthly
18 rent shall be one hundred and twenty-five percent (125%) of the monthly rent payable
19 during the last full calendar month preceding the termination date. Monthly rent for
20 holdover purposes shall be defined as the Monthly Collocation Fee and the monthly portion
21 of the Annual Rent.

22 24. NON-DISTURBANCE AGREEMENT: City agrees that it will from time
23 to time enter into so-called "non-disturbance" agreements with any permitted subtenant of
24 Lessee, which requested such an agreement. Such non-disturbance agreement shall
25 provide that in the event of early termination of this Lease as a result of Lessee's default
26 thereunder, City shall recognize the sublease and not disturb the subtenant's possession
27 thereunder so long as such subtenant shall not be in default under its sublease, that the
28 subtenant will attorn to City and that the subtenant will pay rent to City from the date of

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1 such attornment, and that City shall not be responsible to the subtenant under the sublease
2 except for obligations accruing subsequent to the date of such attornment.

3 25. QUIET POSSESSION: Except as otherwise provided in this Lease,
4 City covenants and agrees that Lessee, upon paying the rent and other charges herein
5 provided for and observing and keeping the covenants, conditions, and terms of this Lease,
6 Lessee shall lawfully and quietly hold, occupy, and enjoy the Premises during the term of
7 this Lease without any hindrance or molestation by City or any person claiming under City.

8 26. MISCELLANEOUS PROVISIONS: Any notice, demand, request,
9 consent, approval or communication that either party desires or is required to give to the
10 other party or to any other person shall be in writing and either served personally or sent
11 by prepaid, first-class mail, return receipt requested. The addresses to the parties are as
12 follows:

13 TO CITY: City Manager
14 10th Floor, City Hall
15 411 West Ocean Boulevard
16 Long Beach, California 90802

17 WITH A COPY TO: Director of Parks, Recreation & Marine
18 2760 Studebaker Road
19 Long Beach, California 90815-1697

20 TO LESSEE: Sprint PCS Assets
21 12920 SE 38th St,
22 Bellevue, WA 98006
23 Attention: Lease Compliance/LA82116A

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29 Either party may change its address by notifying the other party of the change
30 of address. Notice shall be deemed communicated within forty-eight (48) hours from the
31 time of mailing if mailed as provided in this Section.

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IN WITNESS WHEREOF the Parties have executed this Lease with all formalities required by law as of the date stated below.

"Lessee"

SPRINT PCS ASSETS, L.L.C., a Delaware limited liability company

06/02/2023, 2023

By [Signature]
Name DENIS DE MARCO
Title MARKET DIRECTOR

This Lease is approved as to form on Sprint PCS Assets Legal

_____, 2023

By _____
Name _____

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

CITY OF LONG BEACH, a municipal corporation

June 23, 2023

By [Signature]
City Manager

This Amended and Restated Communications Site Lease No. 29392 is approved as to form on June 8, 2023.

DAWN MCINTOSH, City Attorney

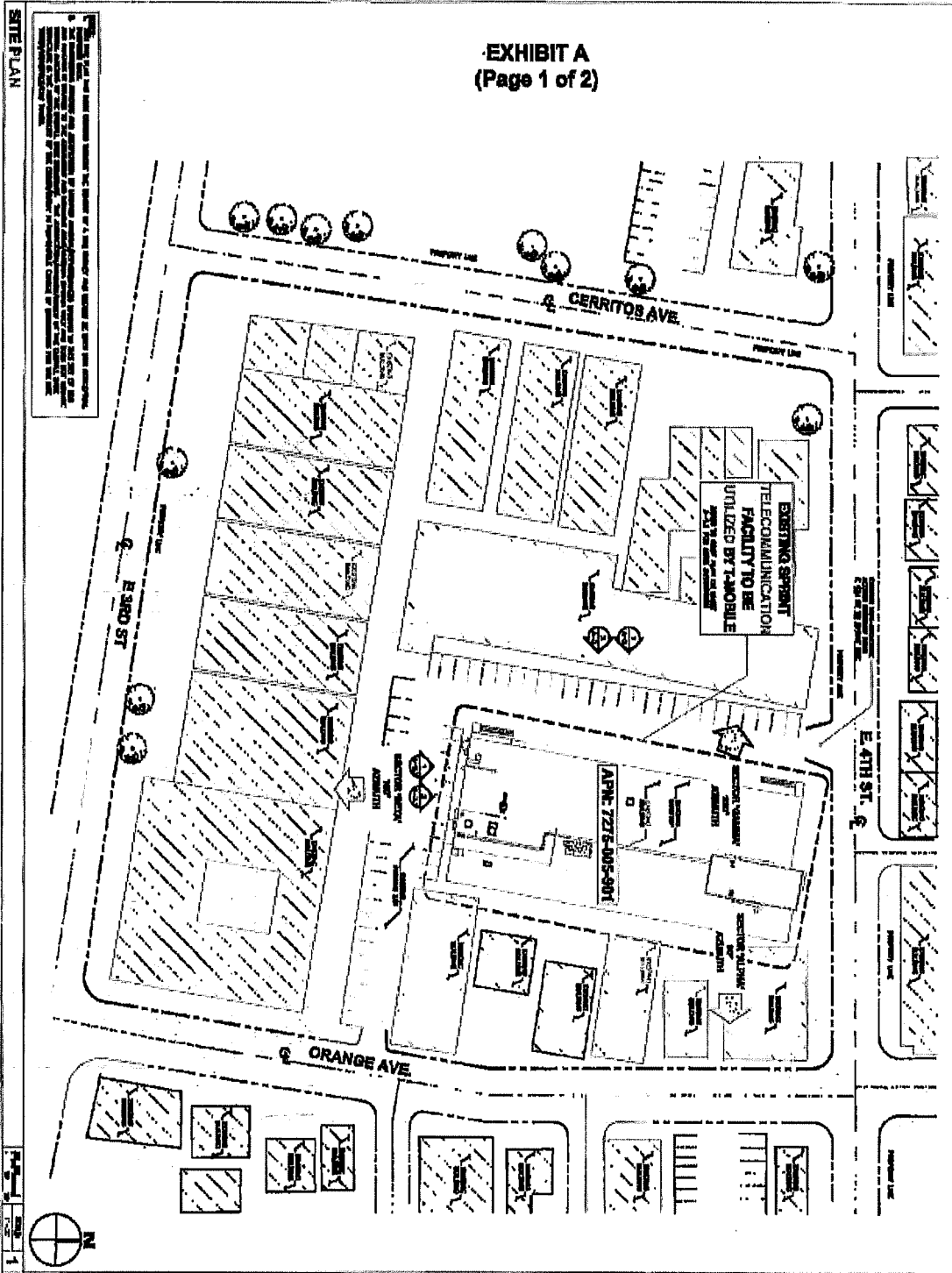
By [Signature]
Deputy

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**Exhibit A
Premises**

EXHIBIT A
(Page 1 of 2)



SITE PLAN

The site plan shall be used to determine the location of all proposed structures, parking lots, and other facilities. The plan shall also show the location of all existing structures, parking lots, and other facilities. The plan shall be prepared in accordance with the requirements of the applicable codes and regulations. The plan shall be submitted to the appropriate authority for review and approval.

NATIONAL
TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

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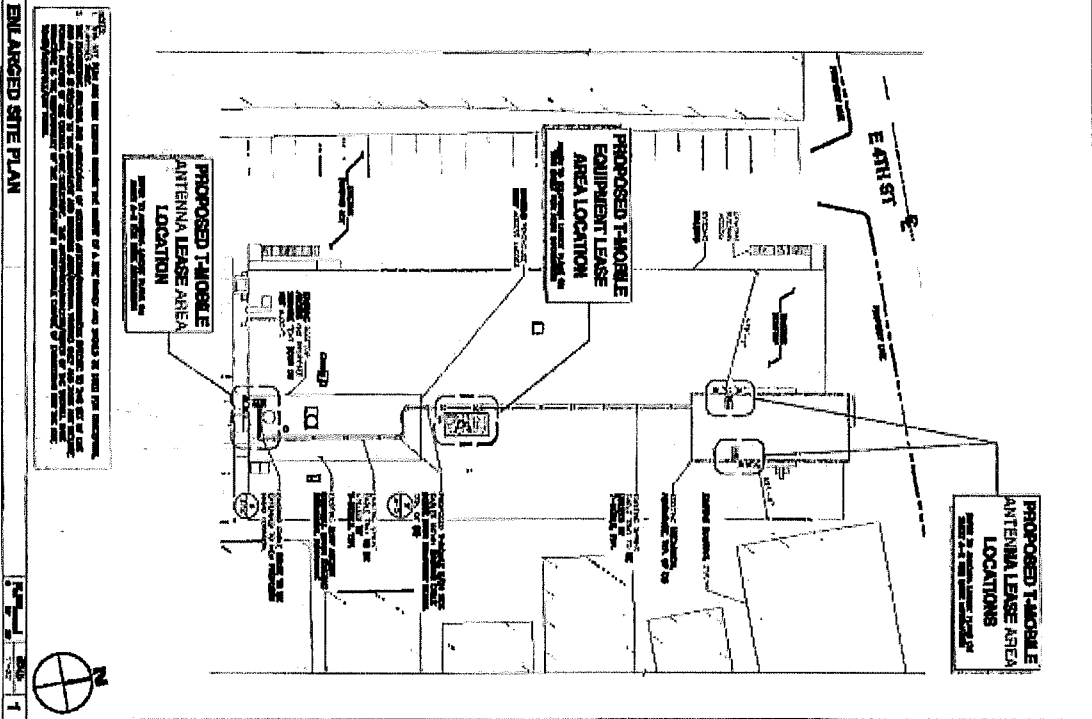
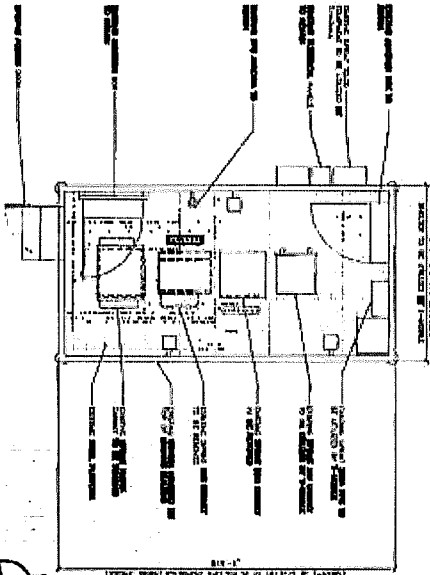
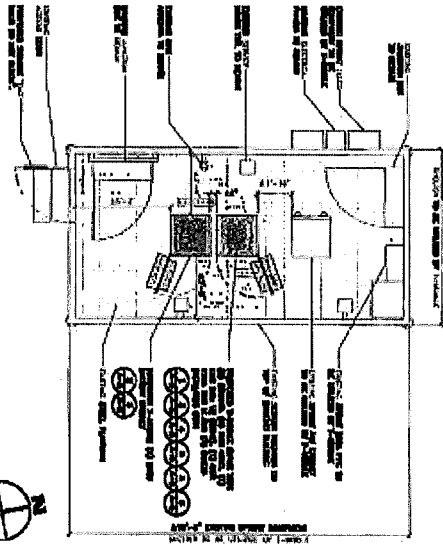
LABORATORY LONG BEACH
SENIOR CENTER
(SPRINT RETAIN)

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NO.	DATE	DESCRIPTION
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**EXHIBIT A
(Page 2 of 2)**

1. ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.
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Sprint **at** **St. Modica**

NATIONAL

LAB2116A

LAWRENCE/LONG BEACH

SENIOR CENTER

(SPRINT RETAIN)

ENLARGED SITE & EQUIPMENT LAYOUT PLANS

A-1.1

Signing Authority: L08