

**Council Meeting: March 18, 2008****SUBJECT: Lease Between the City of Sunnyvale and T-Mobile USA, Inc.,
of Ground Space and Space on Light Standard at Ortega Park****REPORT IN BRIEF**

Omnipoint Communications, Inc., d/b/a T-Mobile USA, Inc. (T-Mobile) is proposing the construction of a cellular antenna project at Ortega Park. The proposal has gone through the administrative process outlined in Report to Council, "Study Issue: Consider Establishing Council Policies Regarding Commercial Use of Parks, Open Spaces and Recreation Facilities Owned or Maintained by the City" (RTC 06-306), which was approved by the City Council on October 10, 2006. A description of this process has been attached for Council's reference.

The use of City property for commercial purposes will require a lease between the City and T-Mobile. The negotiated rent of the site is \$1,900 per month, or \$22,800 per year, which will be applied as revenue to the Community Recreation Fund.

Staff recommends the City Council approve the lease between the City and T-Mobile for ground space and space on a light standard at Ortega Park.

BACKGROUND

T-Mobile contacted the City to propose the construction of a wireless antenna project to enhance communication for their customers in the Ortega Park neighborhood of Sunnyvale. Following this request, staff took steps to review this project consistent with City Council's direction received on October 10, 2006. Specifically, staff reviewed possible park facility improvements that could be completed within the scope of this project, facilitated public meetings for the near neighbors, presented the proposal to the Parks and Recreation Commission and the Planning Commission and negotiated a lease.

On January 10, 2007, the Parks and Recreation Commission recommended that the Planning Commission approve T-Mobile's Use Permit for this project. The Planning Commission adopted T-Mobile's Negative Declaration and approved the related Use Permit on April 9, 2007.

The Planning Commission's decision to approve a Use Permit was appealed to the City Council by eleven neighbors who live adjacent to the proposed project.

The City Council denied this appeal on September 18, 2007, and upheld the decision by the Planning Commission to approve the Use Permit and adopt the Negative Declaration.

EXISTING POLICY

From the Sunnyvale Municipal Code:

Chapter 2.07 Purchase, Sale or Lease of Real Property

2.07.030 Awarding authority for purchases, sales or leases of real property

- (a) The city council shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or lease cost exceeds seventy-five thousand dollars.
- (b) The city manager shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or lease cost is seventy-five thousand dollars or less, or where the lease results in revenue to the city and is for a period less than or equal to fifty-five years.
(Ord. 2628-99 § 2 (part))

Chapter 19.54 Wireless Telecommunications Facilities

19.54.160 Public property and public right-of-way

- (a) The city manager or the manager's designee may establish terms and conditions under which any public property or facility or right-of-way may be made available by lease or franchise as a location for a wireless telecommunication facility.
- (b) No wireless telecommunication facility shall be constructed in or upon a public property or facility owned by the city, unless the telecommunications provider seeking to operate the facility has obtained a lease from the city, authorizing the provider to occupy the property or facility. The lease shall include the standard set forth in this chapter.

From the Open Space and Recreation Sub-Element:

Goal 2.2A Open Space

Policy 2.2.A.8

Support the acquisition or joint use through agreements with partners of suitable sites to enhance Sunnyvale's open spaces and recreation facilities based on community need and through such strategies as development of

easements and right-of-ways for open space use, conversion of sites to open space from developed use of land, and land banking.

Goal 2.2B Programming

Policy 2.2.B.4

Use entrepreneurial strategies to identify and reach new markets for programs, services and revenue generation, and to strengthen relationships with existing markets.

Policy 2.2.B.6

Leverage available resources by pursuing co-funded and/or cooperative agreements for provision and maintenance of programs, facilities, and services, in order to maximize benefits to the community. Partners may include, but are not limited to, school districts, non-profit groups, governmental agencies and businesses.

From the Fiscal Sub-Element:

7.1B Revenue Policies

B.1: Revenue Base

B.1.1. The City will maintain a diversified and stable revenue base, not overly dependent on any land use or external funding source.

From Section 704 of the Federal Telecommunications Act of 1996:

No State or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

DISCUSSION

T-Mobile's project proposal includes the replacement of an existing ball field light standard in Ortega Park with a new pole of similar height and the installation of three panel antennas immediately below the lights near the top of the pole. The equipment cabinets for the telecommunications facility will be placed inside a proposed rebuilt two-story storage/scorer's booth. The proposed project site is located at 636 Harrow Way.

The use of City property for commercial purposes will require a lease between the City and T-Mobile. The negotiated rent of the site is \$1,900 per month, or \$22,800 per year, which will be deposited to the Community Recreation Fund.

The initial term of the lease is ten years, with the right to extend for two additional five-year terms.

As described in RTC 06-306, the City Manager may approve lease agreements that result in revenue to the City and are for a term of 55 years or less. The City Council's review is not required for approval/denial of any proposed lease agreement for cellular antennas in parks. Due to public interest in cellular antenna sites and as an administrative practice, the City Manager has directed staff to present the negotiated agreements to the City Council in the form of a Report to Council placed on the consent portion of the Council's agenda.

Completion of this project will improve cellular communications in the Ortega Park neighborhood and will support existing City Council Policy on this subject. The lease will also provide ongoing financial support of \$1,900 per month to the Community Recreation Fund and save the City infrastructure replacement funds (for the storage/scorer's booth building).

FISCAL IMPACT

All costs for the project will be paid by T-Mobile.

The City will receive \$1,900 per month, payable monthly, or \$22,800 per year. The rent will be increased annually by 4%. Over the maximum twenty-year term, the City would receive \$678,942 (after adjustment for the annual increase) in revenue. Payments will be due on the earlier of the first day of the first month T-Mobile has obtained all permits and approvals that will allow the installation of the communications facility; or June 1, 2008. These funds will help offset existing expenses in the provision of recreation services for Sunnyvale. These funds will not be available to expand services to the community.

Removal and replacement of the Ortega Park storage/scorer's booth building at the expense of T-Mobile will save the City \$15,000 to \$40,000 in future infrastructure costs.

PUBLIC CONTACT

Community Meetings:

The Applicant and the Parks and Recreation Department staff held two community meetings on November 30, 2006 and December 2, 2006.

Parks and Recreation Commission Public Hearing:

The Parks and Recreation Department also held a noticed public hearing on January 10, 2007, in which the Parks and Recreation Commission determined

that the non-park use of the site would be consistent with the goals and policies of the Parks and Recreation Department.

Planning Commission Public Hearing:

The Use Permit was reviewed by the Planning Commission in a noticed public hearing conducted on April 9, 2007. In addition, notices were mailed to property owners and residents within 300 feet of the project site for the Planning Commission public hearing.

City Council Meeting:

An appeal of the Planning Commission's decision to approve a Use Permit was heard by the City Council in a noticed public meeting conducted on September 18, 2007.

Current Public Contact:

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Council approve the proposed lease agreement between the City and T-Mobile USA, Inc., for ground space and space on light standard at Ortega Park, subject to T-Mobile applying for and obtaining all required building safety permits.
2. Council not approve the proposed lease agreement between the City and T-Mobile USA, Inc., for ground space and space on light standard at Ortega Park.

RECOMMENDATION

Staff recommends Council approve Alternative 1: Council approve the proposed lease agreement between the City and T-Mobile, subject to T-Mobile applying for and obtaining all required building safety permits.

The Parks and Recreation Commission recommended that the Planning Commission approve T-Mobile's Use Permit for this project. The Planning Commission adopted T-Mobile's Negative Declaration and approved the related Use Permit.

The Planning Commission's decision to approve a Use Permit was appealed to the City Council by eleven neighbors who live adjacent to the proposed project.

The City Council denied this appeal and upheld the decision by the Planning Commission to approve the Use Permit and adopt the Negative Declaration.

This action will improve cellular communications in the Ortega Park neighborhood and will support existing City Council Policy on this subject. The lease will also provide ongoing financial support of \$1,900 per month to the Community Recreation Fund and save the City infrastructure replacement funds (for the storage/scorer's booth building).

Reviewed by:

Cuong Nguyen, Director, Department of Information Technology
Prepared by: Cheryl Bunnell, Manager, IT Administration

Reviewed by:

David Lewis, Director, Department of Parks and Recreation

Approved by:

Amy Chan
City Manager

Attachments

- A. Lease between the City of Sunnyvale and Omnipoint Communications, Inc., d/b/a T-Mobile USA, Inc., of Ground Space and Space on Light Standard at Ortega Park
- B. Administrative process for Cell Tower Requests

Attachment A

**LEASE BETWEEN CITY OF SUNNYVALE
AND OMNIPOINT COMMUNICATIONS, INC.,
d/b/a T-MOBILE USA, INC.,
OF GROUND SPACE AND SPACE ON LIGHT STANDARD
AT ORTEGA PARK**

Dated _____, 2008, between **City of Sunnyvale**, a municipal corporation (“Lessor”), having its principal place of business at 456 West Olive Avenue, Sunnyvale, California, 94086, and Omnipoint Communications, Inc., a Delaware Corporation, d/b/a T-Mobile (“Lessee”), having its principal place of business at 2880-A Bisso Lane, Concord, CA 94520.

1. **The Site.** Lessor is the record owner of that certain parcel of real property located in the State of California, County of Santa Clara, City of Sunnyvale, commonly known as Ortega Park, also known as Assessor’s Parcel No. 309-37-003 (the “Site”). The legal description of the Site is contained in Exhibit A attached to and incorporated in this Lease.

2. **Lease of the Premises.**
 - (a) **Premises.** Lessor hereby leases to Lessee and Lessee leases from Lessor that portion of the Site generally described as follows: approximately 150 square feet of ground space on which Lessee, upon obtaining all necessary permits, shall replace the existing softball field score booth structure and expand such structure by an area consisting of eight feet (8’) by fourteen feet (14’) to include room for location of Lessee’s communications equipment. Lessee shall also replace the existing sixty foot (60’) light standard (the “Tower”) on the first base side of the ball field on the Site for placement of antennas and space for cable and conduit between the equipment room and the Tower (collectively the “Premises”). A description of the Premises which shall be controlling in the event of any dispute is contained in Exhibit B attached to and incorporated in this Lease.
 - (b) **Improvements.** Upon Lessee obtaining all permits and approvals necessary for Lessee to be legally entitled to install facilities for providing wireless communication services at the Site, Lessee shall, in a timely fashion, install the facilities in accordance with the plans attached as Exhibit B and any conditions of approval imposed through the permit process. Lessee shall obtain the consent of Lessor, which consent shall not be unreasonably withheld, for any structural modifications required to accommodate the Site not shown in Exhibit B and for installation of any additional antennas on the Tower, provided Lessor’s consent shall not be required for Lessee to repair and replace its existing antennas with antennas of like kind. Lessee shall obtain all necessary governmental approvals and permits prior to installing equipment and antennas and shall provide Lessor with notice prior to the start of installation. All Lessee contractors and subcontractors shall be duly licensed in the State of California.
 - (c) **Transfer of Tower.** Construction of the new Tower shall not interfere with the use of the existing light standard by Lessor during the period of construction. When the new Tower is completed, Lessee shall be responsible, at Lessee’s own cost and expense, for relocation and realignment of Lessor’s equipment. Lessee shall install Lessor’s equipment at the same height and same position as existing lights regardless of the height of the new Tower to ensure the very precise lighting of the ball field. Within three (3) months of the completion of the new Tower, Lessee, at its own cost and expense, shall disassemble the existing light standard at the Site and

remove and dispose of it at which time said light standard shall become the personal property of Lessee upon its removal from the Site. Upon completion of the construction of the new Tower, all of Lessee's right, title and interest in the Tower shall pass to Lessor.

- (d) **Use of Tower by Lessee.** Lessee shall not install any equipment at the Site until it has, at its own cost and expense, provided one or more engineering studies which assure that the Site has sufficient load bearing capacity to accommodate Lessee equipment in addition to any equipment installed thereon by any other users or the City. Subject to the provisions of Section 9, below, Lessee equipment shall not interfere with any other users' equipment or the City's existing equipment. Other existing users and the City shall not be required to move existing equipment to accommodate any such new equipment or new user.

3. **Rent.**

- (a) **Initial Term Rent.** Lessee shall pay to Lessor as base rent the sum of One-Thousand and Nine Hundred Dollars (\$1,900) per month during the initial term of this Lease, due and payable on the first day of each month, in advance, beginning with the Commencement Date (defined below).
- (b) **Utility Service.** Lessee shall be solely responsible, at Lessee's cost and expense, for the installation, maintenance, repair, and replacement of any utility service to be provided for Lessee's use of the Premises. Lessee shall be solely responsible for payment of all utility service rendered in connection with such use and shall be responsible for the installation, maintenance, repair, and replacement (if necessary) of metering equipment on the Premises to separately measure the utility service of Lessee on the Site, as distinguished from utility service furnished on the Site to Lessor and other users
- (c) **Annual Adjustment to Rent.** The Base Rent shall be increased annually on each anniversary of the Commencement Date (as defined below) of this Lease by four percent (4%).
- (d) **Adjustment to Rent for Expansion of Premises.** In the event Lessee desires to expand the square footage of the ground space included in the Premises beyond that shown on Exhibit B. Rent shall be increased in proportion to the extra square footage included in the revised Premises upon Lessor's written approval to expand the ground space. Adjustment to rent shall be effective upon the first day of the month following completion of such expansion.
- (e) **Extension Term Rent.** In the event Lessee exercises its option for the first or any subsequent extension term, the same terms for annual increases listed above shall apply.

4. **Term of Lease.** This Lease shall be for an initial term of ten (10) years. Lessee shall have the right to extend its tenancy beyond the initial term for two (2) additional successive optional extension terms of five (5) years each on the same terms, covenants and conditions (except as to the number of remaining option terms) as are contained in this Lease. Renewal shall be automatic unless Lessee provides notice to Lessor not less than sixty (60) days prior to the expiration of the then current term of its intent to terminate the lease.

5. **Commencement Date; Governmental Permits.** The initial term of this Lease shall commence on the earlier to occur of either the first day of the first month following Lessee's

notice to Lessor in writing that Lessee has obtained all permits and approvals necessary for Lessee to be legally entitled to install its communications facilities for providing wireless communication services at the Premises, or _____, (the "Commencement Date"). Lessee shall be permitted to occupy the Premises and commence installation of the facilities upon receipt of all such permits and approvals and notice to Lessor as required in Section 2. Any such pre-Commencement Date occupancy by Lessee shall be under all the terms and conditions of this Lease.

6. **Use of the Premises.** Lessee shall use the Premises as one of Lessee's communications sites (a "Wireless Site") comprising a component of Lessee's system (the "System") for furnishing wireless services that Lessee is legally authorized to provide during the term of this Lease provided, however, Lessee will not use the Premises in a manner that would conflict with any existing users. A Wireless Site is a site at which radio, telephone and communications equipment and antennas are installed and used to send and receive radio signals to and from wireless communications devices and to connect those signals to radio, telephone, or other communications facilities either directly, by means of cables, or indirectly, by means of transmitting and receiving facilities (including microwave antennas) located at the Wireless Site. Lessee shall not use the Premises for any other purposes without the written consent of Lessor.

7. **Access.** Lessor hereby grants to Lessee for the duration of this Lease, or any extensions thereof, a non-exclusive, irrevocable license in and over the common areas at the Site and the following portions of the Site (collectively the "Access Areas"): All areas providing physical access to or from the Premises by personnel and equipment from the nearest public right-of-way and utilities from the nearest service, including, but not limited to, walkways, staircases, and ladders; the roof of any building on which Lessee's equipment is installed; and all utility ducts and conduits (including telephone, cable, or other conduits) and any other means by which heat, ventilation, air conditioning, power, communications signals, installation, service, and maintenance personnel, and any and all other products and/or services may be delivered to or from the Premises. The rights granted to Lessee herein are for the purpose of installing, constructing, maintaining, restoring, replacing, and operating Lessee equipment located within or on the Premises or such Access Areas, including, in the case of an emergency, the right to install temporary facilities required to maintain continuous operation of the Wireless Site including a fuel-powered electrical generator. Such rights shall include the right of ingress and egress, twenty-four (24) hours per day, seven (7) days per week over such Access Areas for access to or from any of Lessee equipment.

8. **Responsibility of Lessee for Maintenance of Light Standard and Damage to Access Areas, Facilities and Equipment.** Lessee agrees to perform the following:
 - (a) Provide a minimum of one (1) week's written notice to the Director of Parks and Recreation of Lessor ("the Director") prior to the planned initial installation of equipment.
 - (b) Provide a minimum of 48 hours telephone notice to the Parks Division at 408-730-7506 prior to any routine maintenance of the equipment to be undertaken by Lessee, its employees, agents, servants, contractors or subcontractors, or any of their employees, agents or servants.

- (c) Provide immediate written notice to the Director whenever Lessee, its employees, agents, servants, contractors or subcontractors, or any of their employees, agents, or servants causes damages to the Access Area or any portion thereof.
- (d) Provide for repair and/or repainting of any portion of the facility, including the score booth and structure housing Lessee's communications equipment, which is vandalized with graffiti, obscene or offensive language, logos, gang-related markings, etc. Such repair or repainting shall occur within one (1) week of written notice provided by the Director to the Lessee.
- (e) Change the bulbs and/or light equipment on the light standard on which Lessee's antennas are located as needed each year to be completed within five (5) working days of notice provided by the Parks Division to the Lessee. Lessor will provide the bulbs and/or light equipment. Lessee shall ensure that the bulbs are aligned per current alignment to provide acceptable light coverage on the ball field.

In the event that Lessee or any of its employees, agents, servants, contractors or subcontractors, or any of their employees, agents, or servants causes damage to the Access Areas or any portion thereof, Lessee shall be responsible to Lessor for such damage. Not later than seven (7) days after written direction by the Director to repair such damage, Lessee shall complete the repair to the reasonable satisfaction of the Director. If the magnitude of the repair is such that it cannot be satisfactorily completed within seven (7) days, Lessee may, within said seven (7) day period request the Director in writing for an extension of time to complete the repairs, not to exceed thirty (30) days. The Director shall not unreasonably withhold approval of such extension.

In the event that Lessee fails to make timely and satisfactory repairs to the damage to the Access Area as required by this Agreement, following not less than five (5) days' prior written notice by Lessor, the Director may, at his option, either direct the repair either to be performed by Lessor's forces, or by private contractor pursuant to public bidding process, subject to applicable laws pertaining to public bidding on public works contracts. If the Director directs the repairs to be made, Lessee shall be responsible for all costs of repair and shall reimburse Lessor for such costs within thirty (30) days of presentation of invoice.

Upon execution of this Lease, Lessee shall deliver to Lessor and shall maintain in full force and effect a surety bond in the amount of sixty-five thousand dollars (\$65,000.00) to guarantee the faithful performance of the obligations set forth in this Paragraph 8 of this Lease and the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought on the bond. A corporate surety authorized to engage in a surety business in California and satisfactory to the Director shall issue the bond.

9. Protections Against Interference.

- (a) Lessee agrees to install, maintain, and operate its equipment in a manner which does not interfere with the operation of Lessor's and any other existing users' properly operated communication equipment at the Site. Prior to installation of any of Lessee equipment, Lessee shall, at its own cost and expense, be responsible for conducting any interference and compatibility testing necessary to determine the compatibility of Lessee's, Lessor's, and any existing users' equipment. Any such

testing shall be conducted by a qualified third party electrical engineering firm that is reasonably acceptable to Lessor, Lessee, and any existing users. Lessee will cooperate with Lessor and any existing users to resolve any interference resulting from the operation of Lessor's, any existing users', and Lessee's equipment. If such interference cannot be promptly resolved, in spite of the fact that all parties are operating within their duly assigned frequencies and in accordance with FCC rules and regulations, then Lessee agrees, at its own cost and expense, to take such action as is necessary to eliminate the interference and to cease operation of its equipment until the interference is eliminated, except for brief tests necessary for elimination of the interference.

- (b) Lessor shall provide Lessee with notice of any proposed installation of communication antennas on the Site. Such notice shall include technical information from the party proposing such installation that is sufficient for Lessee to determine whether the installation will interfere with Lessee's operation. Lessee shall advise Lessor within ten (10) days after receipt of such notice whether, in Lessee's reasonable discretion, the proposed use will cause any interference with Lessee's operation of the System. Lessor will not grant a lease to any party for use of the Site nor materially modify its use of the Site, except for a modification required for the public health and safety emergency communications services provided by Lessor, if such new use would interfere with Lessee's operation of the System or diminish Lessee's signal quality for the area serviced by the Wireless Site. Any future use of the Site which permits the installation of communication equipment, unless it is a use by Lessor required for emergency communications provided for the public health and safety and modified or alternate installations are not possible, shall be conditioned upon not interfering with Lessee's operation of the Wireless Site. Lessee shall not be required to modify the Wireless Site to prevent interference with any new communications use of the Site, unless the new communications use is by Lessor and is required to provide for public health and safety and alternate or modified installations are not possible, so long as Lessee operates the Wireless Site within its assigned frequencies and in compliance with all applicable FCC rules and regulations.

10. **Damage and Destruction.** If the premises are, in whole or in part, damaged or destroyed, then:

- (a) If wholly damaged or destroyed so that all of the Premises are rendered unusable as a Wireless Site, then upon either party's election and notice to the other party, which notice must be delivered within thirty (30) days of such damage or destruction, this Lease shall then terminate and Lessee shall be liable for the rent only up to the time of such destruction and any rent prepaid by Lessee shall be returned pro rata to Lessee.
- (b) If the Premises are only partially damaged or destroyed and the Premises are still usable as a Wireless Site, (or if neither party shall elect to terminate this Lease pursuant to (a) above), Lessor shall, within a reasonable time, repair the Premises with a reasonable reduction of rent from the time of such partial destruction until the Premises are again as fully usable by Lessee as they were before such partial damage or destruction; provided, however, that unless such partial damage or destruction is caused by Lessor, Lessor's agents or employees, Lessor shall be obligated to repair or replace the Premises only, excluding tenant improvements constructed, installed, or placed on to the Premises by Lessee. If such partial damage or destruction shall occur within three (3) months prior to the expiration of

the Lease term or any extension term, then this Lease, if either Lessor or Lessee so elects, shall then terminate and Lessee shall be liable for rent only up to the time of such damage or destruction and any rent prepaid by Lessee shall be returned pro rata to Lessee. A decision as to whether destroyed Premises (or condemned Premises for purposes of Section 11) are still usable as a Wireless Site, shall be reasonably made jointly by Lessee and Lessor and, if they cannot agree, by an arbitrator reasonably acceptable to both parties. The foregoing notwithstanding, Lessee may reoccupy the Premises for operation of the Wireless Site in the event the Premises are rebuilt within eighteen (18) months of any such damage or destruction.

11. **Condemnation**. If all or part of the Premises is taken by condemnation such that the Premises are no longer usable as a Wireless Site, this Lease shall terminate unless Lessee's equipment can be relocated to another position at the Site acceptable to Lessor and Lessee. Lessee shall be entitled only to that portion of the proceeds of condemnation that are directly attributable to the value and cost of relocation of Lessee's equipment.

12. **Need to Prevent Unsupervised Access**. Lessee equipment is highly sensitive and is subject to federal requirements such that any entry on to the Premises be restricted. Accordingly, Lessor shall not enter the Premises (other than in an emergency) unless it has given Lessee twenty-four (24) hours' actual notice. In case of emergency, Lessor shall make reasonable efforts to notify Lessee prior to entering the Premises and shall advise Lessee of any such entry promptly thereafter. A spare key to Lessee's equipment room shall be kept in a locked box in Lessor's dispatch office for use by Lessor in an emergency situation.

13. **Termination by Lessee**. Lessee may terminate this Lease for cause upon giving thirty (30) days' written notice to Lessor if any of the following events occur:
 - (a) Lessee has made timely and complete application to all appropriate agencies and fails to obtain or loses any necessary permits, approvals or orders and is thereby unable to use the Premises as a Wireless Site;
 - (b) Lessee determines that the Premises is not appropriate for locating Lessee's equipment for technological or reasonable economic reasons, including signal interference. In addition, Lessee may terminate if Lessee determines there is a likelihood of interference after a sixty (60) day testing period prior to Lessee's obligation to permanently mount its equipment. During such testing period, Lessee shall not be responsible to pay rent and is permitted to temporarily place its equipment at the desired location to see if it will work in a manner which fulfills the needs of the Lessee and does not interfere with the Lessor's or any existing users' equipment; or
 - (c) Lessor fails to comply with any term, condition or covenant of this Lease and does not cure such failure within thirty (30) days after written notice thereof or in the event of a cure which requires in excess of thirty (30) days to complete, if Lessor has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion. Lessee shall have the right to cure any default by Lessor following such notice and cure period provided Lessee has given Lessor an additional five (5) days prior written notice to undertaking such cure. Lessee may deduct the cost of such cure from rent due hereunder upon presentation of an accounting of such costs to Lessor.

14. **Termination by Lessor.** Lessor may terminate this Lease upon the occurrence of any of the following:

- (a) failure by Lessee to pay any rent required hereunder when due if such failure shall continue for more than thirty (30) calendar days after delivery to Lessee of notice of such failure to make timely payment; or
- (b) failure by Lessee to comply with any material term, condition or covenant of this Lease, other than the payment of rent, if such failure is not cured within thirty (30) days after written notice thereof to Lessee, or in the event of a cure which requires in excess of thirty (30) days to complete, if Lessee has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion. Lessor shall have the right to cure any default by Lessee following such notice and cure period provided Lessor has given Lessee an additional five (5) days prior written notice prior to undertaking such cure. Lessee shall pay the cost of such cure with the next rent due hereunder upon presentation of an accounting of such costs by Lessor.

15. **Warranties and Covenants of Lessor.** Lessor warrants and covenants that:

- (a) Lessor has legal right to possession of the Premises and the power and the right to enter into this Lease and that Lessee, upon the faithful performance of all of the terms, conditions, and obligations of Lessee contained in this Lease, shall peaceably and quietly hold and enjoy the Premises upon the terms, covenants, and conditions set forth in this Lease throughout the term of this Lease and any extensions thereof;
- (b) Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and shall maintain the Site in a manner which will not interfere with Lessee's use of the Premise as contemplated hereby;
- (c) Lessor shall make available to Lessee at the Premises, all presently existing utility services required by Lessee for purposes of the operation of Lessee's equipment at the Premises, provided that Lessee may at its own expense (or Lessor may, if Lessee so requests, at Lessee's expense) install any and all additional utility service facilities which are so required;
- (d) Lessor shall, during the term hereof, make payment of all real property taxes and general and special assessments levied against the Site and the Premises which it has the duty to pay within the time allowed by the taxing authorities in order to avoid penalty;
- (e) Lessor shall maintain, at its expense throughout the term of this Lease, a policy of property insurance for perils usual to a standard "all risk" insurance policy in an amount equal to the full replacement cost of the Premises and all improvements now or hereafter located on the Site, excepting Lessee's equipment, personal property, and trade fixtures; and
- (f) Subject to the provisions of Section 7 above, Lessee shall have access to the Premises from the nearest public way at all times.

16. **Warranties and Covenants of Lessee.** Lessee warrants and covenants that throughout the term of this Lease, Lessee shall maintain comprehensive general liability insurance, with a single combined limit of \$1,000,000, insuring against claims arising out of and in connection with Lessee's use or occupancy of the Premises. Said policy shall name Lessor as an additional insured and shall contain cross liability endorsements. Lessee shall also maintain a policy of property insurance for perils usual to a standard "all risk" insurance

policy on all its personal property, fixtures, tenant improvements and alterations in, on or about the Premises. Lessee shall furnish Lessor with a Certificate indicating the applicable coverage, upon request. Lessee shall maintain the Premises in a clean, safe, and sanitary condition throughout the Lease Term.

17. **Liability and Indemnification.** Lessee shall at all times comply with all laws, ordinances, rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, height, location, use, operation, and removal of equipment authorized herein, and shall fully indemnify Lessor against any claim which may be sustained or incurred by Lessor as a result of Lessee's negligent installation, operation or removal of such improvements. Each party hereunder shall indemnify, hold harmless and defend the other party from any claim (including reasonable attorneys' fees and costs) arising out of the breach of any covenant or warranty made under this Lease. Except for the acts of Lessor and Lessor's agents or employees, Lessor shall not be liable to Lessee for any loss or damages arising out of personal injuries or property damage on the Premises. Lessee shall not be responsible to Lessor or any third party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Site.
18. **Surrender.** Upon termination of this Lease, Lessee shall remove the equipment installed at the Premises by Lessee and shall surrender the Premises in as good order and condition as when first occupied by Lessee, wear and tear and damage by fire or other casualty excepted.
19. **Title To and Removal of Lessee's Equipment.** Title to Lessee's equipment, and all trade fixtures and personal property installed at and affixed to the Premises by Lessee shall be and shall remain the property of Lessee. Lessee may, at any time, including any time it vacates the Premises, remove Lessee's equipment, fixtures, and all of Lessee's personal property from the Premises.
20. **Holding Over.** If Lessee holds over after this Lease has been terminated, the tenancy shall be month-to-month, subject to the provisions of this Lease.
21. **Assignment and Subletting.** Lessee shall not assign, sublet or otherwise transfer or encumber all or any part of Lessee's interest in this Lease without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Notwithstanding the foregoing, Lessee may assign or sublet this Lease or the Premises, or any portion thereof, without Lessor's consent, to any entity which controls, is controlled by, or is under the common control with Lessee, or to any entity resulting from any merger or consolidation with Lessee, or to any affiliate of Lessee, or to any entity that purchases more than fifty percent (50%) of either an ownership interest in Lessee or the assets of Lessee in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Site is located. Upon assignment, Lessee will be relieved of all liabilities hereunder and Lessor shall look to the assignee for performance under this Lease and all obligations hereunder. Should Lessor sell, lease, transfer or otherwise convey all or any part of the Site to any transferee other than Lessee, then such transfer shall be subject to this Lease and all of Lessee's rights hereunder and the rights of Lessee to the Access Areas.

22. **Notices and Other Communications.** Every notice required by this Lease shall be delivered either by (i) personal delivery (including delivery by an overnight courier service which obtains confirmation of receipt) or (ii) postage prepaid, return receipt requested, certified mail, addressed as set forth below:

(a) to the Lessee at:
T-Mobile USA, Inc.,
12920 SE 38th Street,
Bellevue, WA 98006,
Attention: PCS Lease Administrator,
with a copy to: Legal Department

and, with a copy addressed to Lessee at:
Omnipoint Communications
2880-A Bisso Lane
Concord, CA 94520,
Attention: Lease Administrator, or

(b) to the Lessor at:
City of Sunnyvale
650 West Olive Avenue
Sunnyvale, California, 94086
Attention Manager, Information Technology Services, or

(c) at such other address as the intended recipient shall have designated by written notice.

Notice is deemed delivered as of the date the notice is signed for on the confirmation of receipt or return receipt card.

23. **Mutual Release; Waivers of Subrogation.** The parties release each other, and their respective authorized representatives, from any claims for damage to any person or to the Premises and other improvements in which the Premises are located, and to the fixtures, personal property, tenant improvements, and alterations of either Lessor or Lessee in or on the Premises and other improvements in which the Premises are located that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease.

24. **Hazardous Substances.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material (defined herein) on, under, about or within the Site in violation of any law or regulation. Lessor represents, warrants, and agrees:

(a) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Site in violation of any law or regulation; and

- (b) that Lessor will not, and will not permit any third party to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Site in violation of any law or regulation.

Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) ("Claims") arising from any breach of any representation, warranty or agreement contained in this Section. Lessor agrees to indemnify, defend and hold Lessee harmless from Claims resulting from actions on the Site, not caused by Lessor or Lessee prior to and during the term of this Lease. As used in this Section, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the State of California to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

25. **Confidential Information.** In connection with this Lease, and in connection with Lessor's access to the Premises under the terms of this Lease, Lessee has or will disclose to Lessor certain information which is non-public, confidential and/or proprietary in nature, including, without limitation, Lessee's equipment specifications, equipment configuration, frequencies in use and schedules of operation. Such information, together with the terms and conditions of this Lease, and any studies or documents prepared in connection with this Lease which contain or otherwise reflect such information, are referred to in this Lease as "Confidential Information". Lessor shall not disclose the Confidential Information to any third party without the express written authorization of Lessee; provided, however, that Lessor may disclose the Confidential Information:

- (a) as required by law;
- (b) in confidence, to legal counsel, technical consultants, financing sources and prospective purchasers of the Property all with a need to know such information; or
- (c) in connection with the enforcement of this Lease.

Notwithstanding the foregoing, any information made a matter of public record through recordation of a Memorandum of Lease, or similar document, shall not be regarded as Confidential Information. Lessor acknowledges and agrees that a breach of this Section will result in irreparable and continuing damage to Lessee, for which there will be no adequate remedy at law, and in the event of such a breach or a threatened breach, Lessee will be entitled to injunctive relief and/or a decree of specific performance, and all such other relief as may be legally available to Lessee.

26. **Waivers.** Any waiver of any right under this Lease must be in writing and signed by the waiving party.
27. **Written Agreement to Govern.** This Lease is the entire understanding between the parties relating to the subjects it covers.
28. **Attorneys' Fees.** The prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs, and expenses in connection with such action or proceeding from the other party.

29. **FCC Compliance.** Lessee shall be responsible for determination and compliance with all FCC requirements concerning RF emissions and standards. Lessee shall be fully and exclusively liable for any damages resulting from failure to comply with such requirements and standards caused by Lessee's installation and equipment, including all labor and equipment costs for determining the amount of emissions, all costs associated with eliminating excessive emissions, including, but not limited to, filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis, and all costs arising from third party claims against the Lessor attributable to emission non-compliance.
30. **Tower Marking and Lighting Requirements.** Lessor is responsible for compliance with all tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Lessor shall indemnify and hold harmless Lessee from any fines or other liabilities caused by Lessor's failure to comply with such requirements.
31. **Further Assurances.** In addition to the actions specifically mentioned in this Lease, the parties shall each do whatever may be reasonably necessary to accomplish the transactions contemplated in this Lease including, without limitation, execution of all applications, permits and approvals required of Lessor for installation of equipment and utilities at the Wireless Site by Lessee; cooperation in obtaining Non-Disturbance Agreements from holders of senior encumbrances on the Property; and execution of IRS Form W-9 and a Memorandum of this Lease in form appropriate for recording in the county in which the Premises are situated.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first set forth above.

OMNIPPOINT COMMUNICATIONS, INC.,
a Delaware Corporation, d/b/a
T-Mobile

CITY OF SUNNYVALE,,
a Municipal Corporation

By: _____
Name: _____
Title: Area Director: Northern California

By: _____
Name: Amy Chan
Title: City Manager
Federal Tax ID No: 946-000-438

Date: _____, 2008

Date: _____, 2008

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
Legal Description

The Property is legally described as follows:

The land referred to herein is situated in the State of California, County of Santa Clara, City of Sunnyvale, and is described as follows:

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN 25.032 ACRE GROSS PARCEL OF LAND SHOWN ON THE "RECORD OF SURVEY OF A PORTION OF THE NORTHEAST 1 /4 SEC.. 12 T.7S., R.2W. MDM CUPERTINO UNION SCHOOL DISTRICT" FILED FOR RECORD IN BOOK 146 OF MAPS, PAGE 51 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF LOT 1 AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT MAP NO. 3233, SUBURBAN ESTATES" FILED FOR RECORDS IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK 153 OF MAPS AT PAGE 32, SAID POINT ALSO BEING AN THE NORTHERLY LINE OF INVERNESS WAY (62.00 FEET WIDE);

THENCE, CONTINUING ALONG THE NORTHERLY LINE OF INVERNESS WAY S. 89° 55' 00" E., TO A POINT ALONG THE EASTERLY LINE OF THE AFOREMENTIONED 25.032 ACRE PARCEL, A DISTANCE OF 660.00 FEET;

THENCE, ALONG THE EASTERLY LINE OF SAID 25.032 ACRE PARCEL N. 0° 04' 05" W., 618.52 FEET TO A POINT OF BEGINNING OF A CURVE TO THE RIGHT ON THE SOUTHERLY LINE OF HARROW WAY (62.00 FEET WIDE), SAID POINT ALSO BEING THE SOUTHERNMOST CORNER OF THAT PARCEL DEDICATED FOR STREET PURPOSES IN A DEED FROM CUPERTINO UNION SCHOOL DISTRICT TO THE CITY OF SUNNYVALE, RECORDED IN BOOK 8716 OF RECORDS ON PAGE 63;

THENCE, ALONG THE SOUTHERLY LINE OF HARROW WAY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 82.00 FEET THAT BEARS N. 38° 03' 00" E., A CENTRAL ANGLE OF 8° 08' 11", A DISTANCE OF 11.65 FEET;

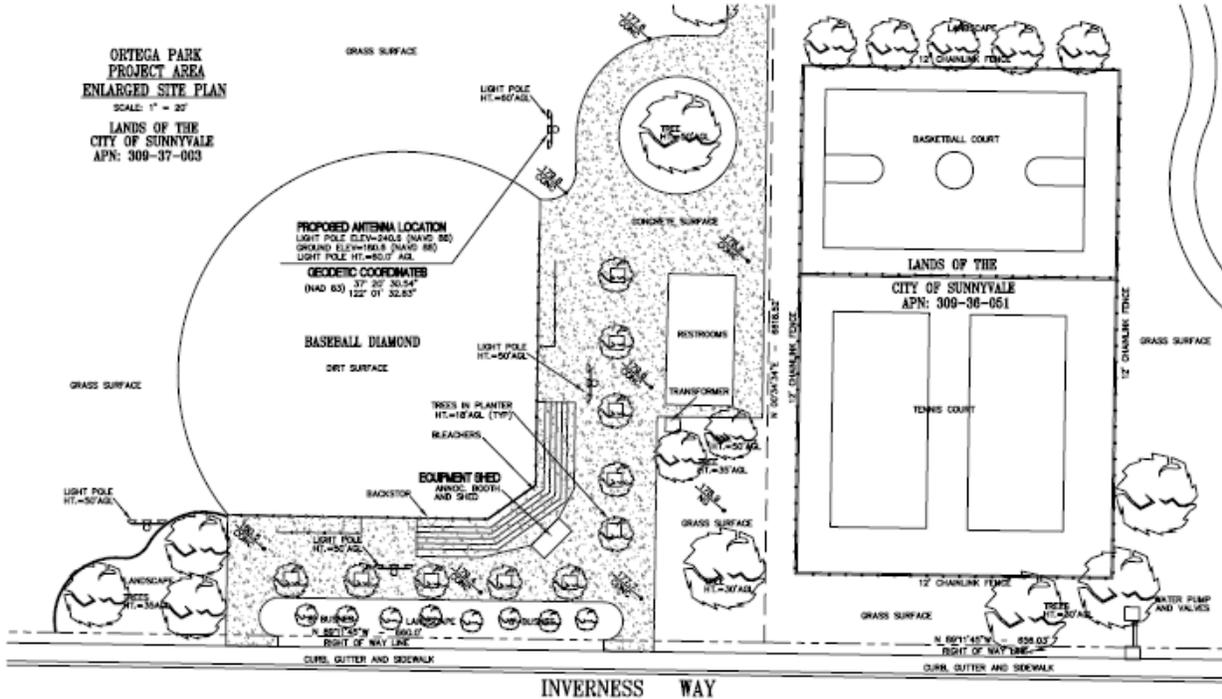
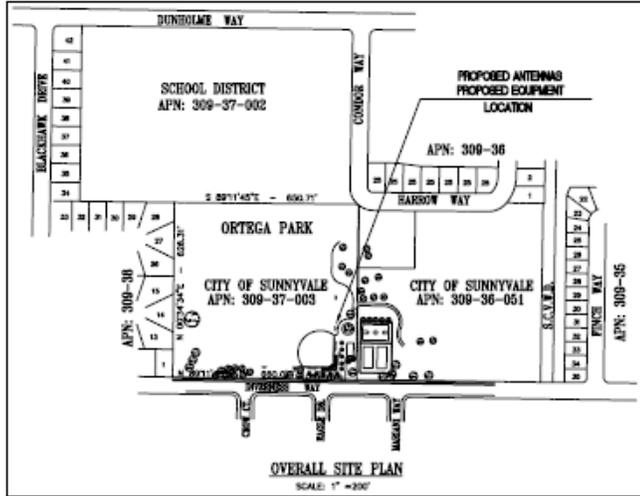
THENCE, LEAVING SAID CURVE, PARALLEL WITH THE CENTERLINE OF DUNHOLME WAY (FORMERLY LAUREL AVENUE, TAKEN AS THE BASIS OF BEARING FOR THIS DESCRIPTION) N. 89° 55' 00" W., A DISTANCE OF 650.71 FEET TO THE NORTHEASTERLY MOST CORNER OF TRACT 3233;

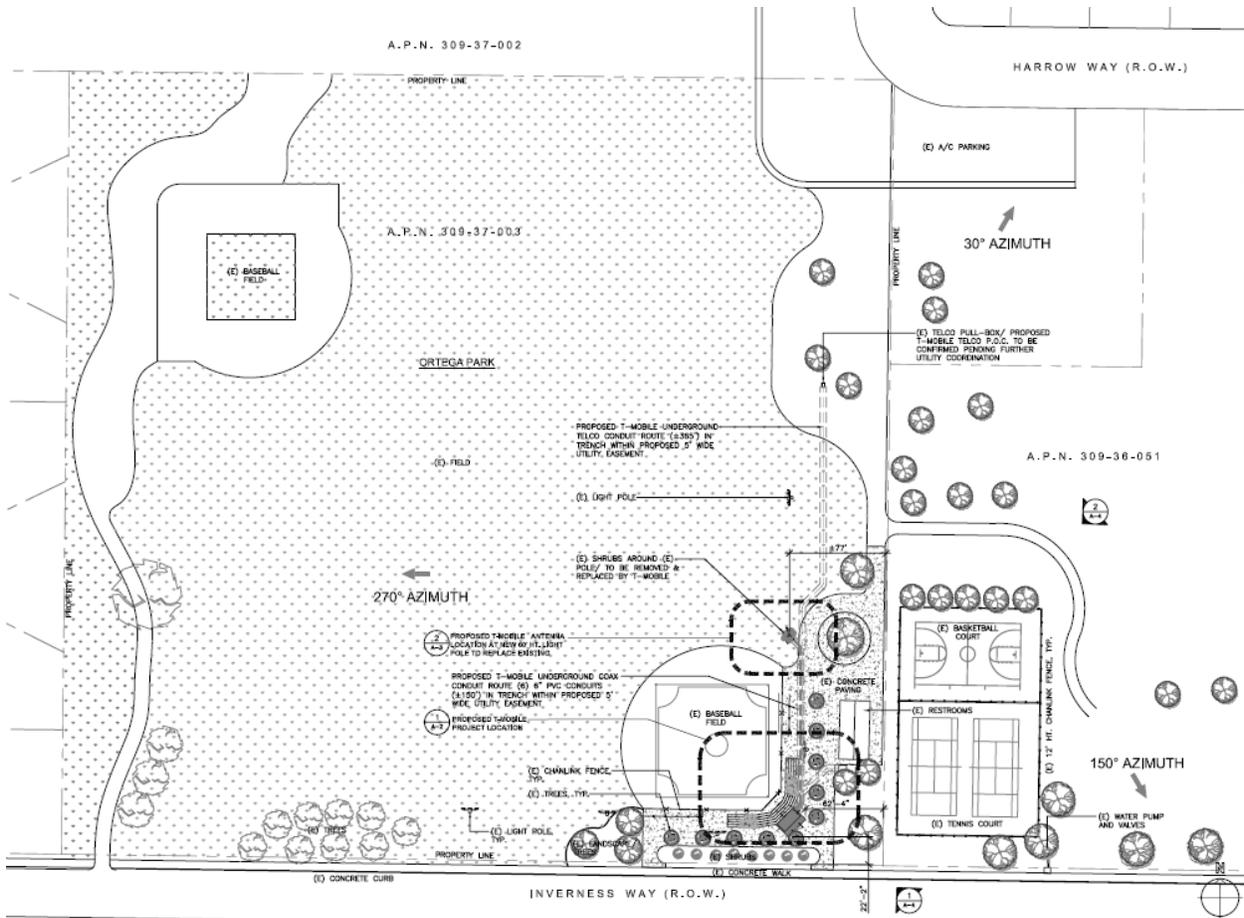
THENCE, ALONG THE EASTERLY LINE OF SAID TRACT 3233, S. 0° 04' 05" E., A DISTANCE OF 626.31 FEET TO THE POINT OF BEGINNING, BEING A PORTION OF LOT 5 AS SHOWN ON MAP FILED IN BOOK M OF MAPS AT PAGE 36.

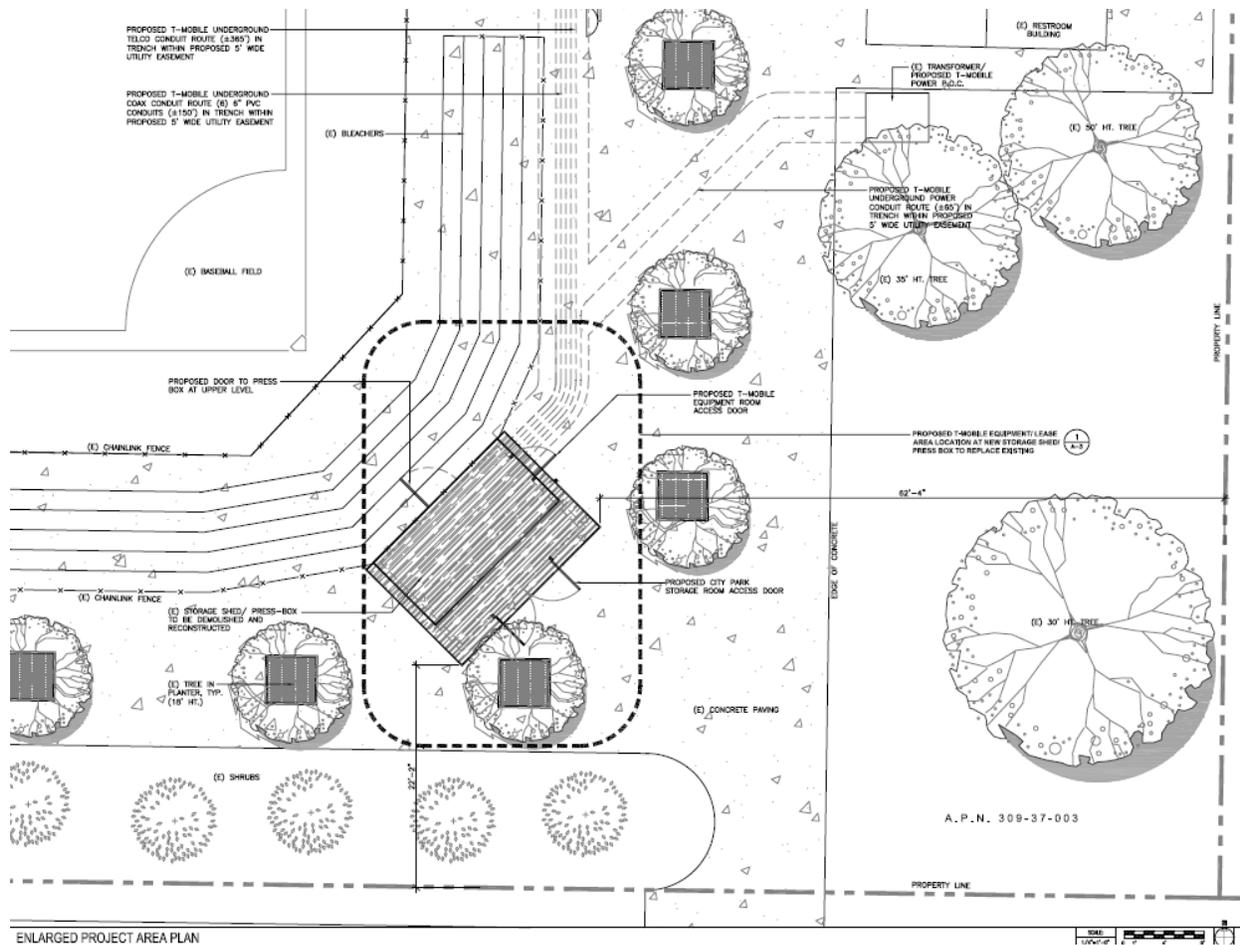
APN: 309-37-003

EXHIBIT B The Premises

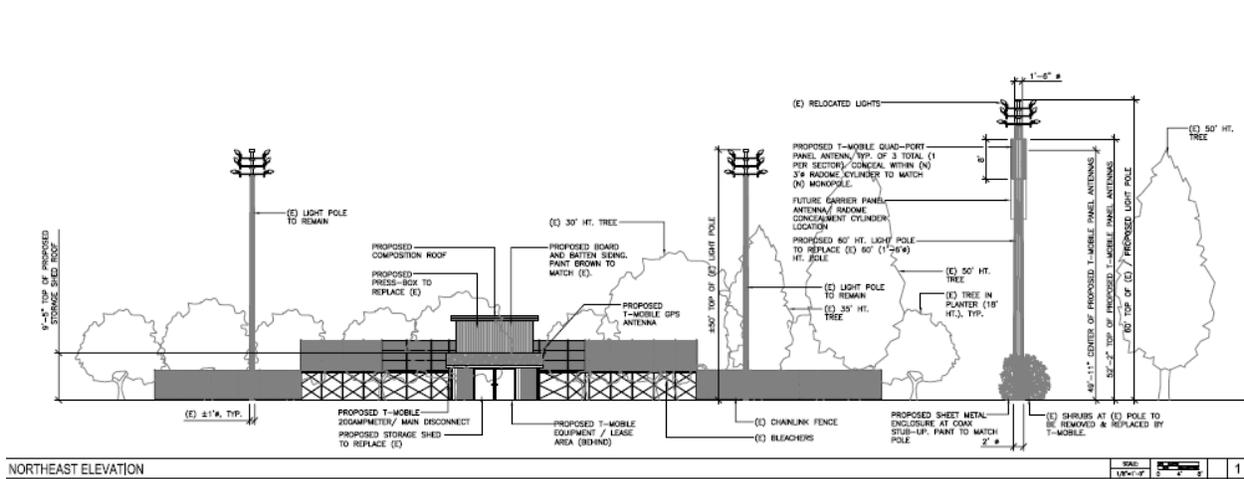
The location of the Premises within the Property (together with access and utilities) is more particularly described and depicted as follows:



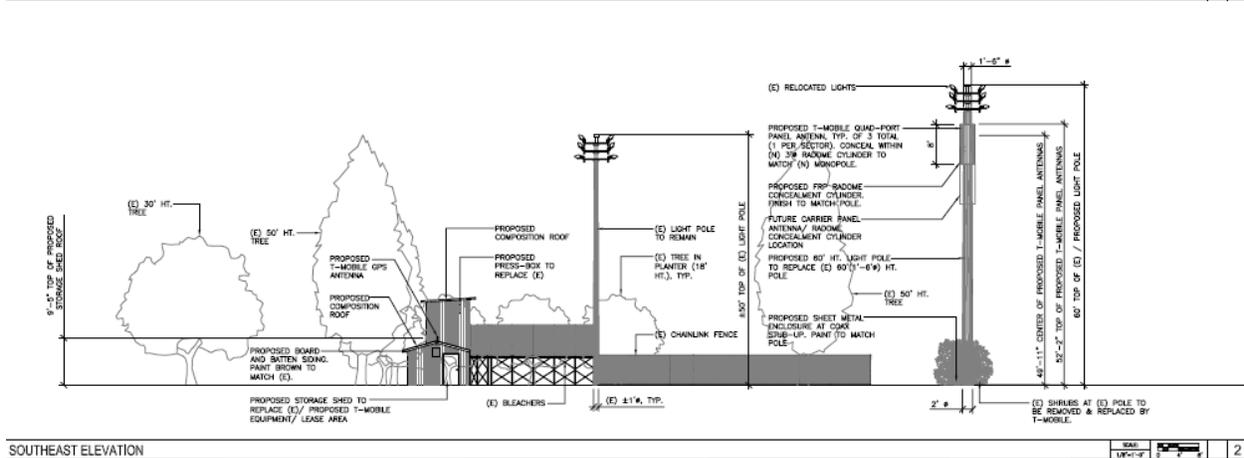




Site Number: SF15206
 Site Name: Ortega Park
 Market: SF01



NORTHEAST ELEVATION



SOUTHEAST ELEVATION

However, it is expressly agreed and understood by and between the Landlord and Tenant that the exact and precise location of the Tenant's Antenna Facilities are subject to review and approval by the planning and/or zoning Boards having jurisdiction over the "Premises". Therefore, it is expressly agreed and understood by and between Landlord and Tenant that the precise location of the Premises as shown on Exhibit "B" may be modified by the Tenant in order to comply with and obtain necessary planning and/or zoning approvals, and any and all other approvals necessary for Tenant's intended use of the property. The Premises as described herein may therefore be modified by the Tenant to reflect the final engineering design. An amended Exhibit "B" (if necessary) will be provided by the Tenant and attached to the lease in place of the existing Exhibit "B", a copy of which will be provided to the Landlord for review prior to being incorporated into the lease.

**Recorded, Requested By, and
When Recorded Return To:**
Omnipoint Communications Inc.
2880-A Bisso Lane
Concord, CA 94520,
Attn: Lease Administration

MEMORANDUM OF LEASE

This Memorandum of Lease with option ("Memorandum") dated as of _____, 2008 is entered into between City of Sunnyvale, a Municipal Corporation ("Lessor") and Omnipoint Communications, Inc., a Delaware corporation, d/b/a T-Mobile ("Lessee") regarding a portion of the property.

See Attached Exhibit "A" incorporated herein for all purposes

The Lease is for a term of ten (10) years and will commence on the earlier of either the first day of the first month following Lessee's notice to Lessor in writing that Lessee has obtained all permits and approvals necessary for Lessee to be legally entitled to install its communications facilities for providing wireless communication services at the Premises, or _____. Tenant shall have the right to extend this Lease for two (2) additional Five-year terms.

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

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LESSEE:

OMNIPOINT COMMUNICATIONS, INC.,
a Delaware Corporation, d/b/a
T-Mobile USA, Inc.

By: _____
Name: _____
Title: Area Director: Northern California

Date: _____, 2008

LESSOR:

CITY OF SUNNYVALE, California,
a Municipal Corporation

By: _____
Amy Chan
Title: City Manager
Federal Tax ID No: 946-000-438

Date: _____, 2008

Exhibit A
Legal Description of the Premises

The land referred to herein is situated in the State of California, County of Santa Clara, City of Sunnyvale, and is described as follows:

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN 25.032 ACRE GROSS PARCEL OF LAND SHOWN ON THE "RECORD OF SURVEY OF A PORTION OF THE NORTHEAST 1 /4 SEC.. 12 T.7S., R.2W. MDM CUPERTINO UNION SCHOOL DISTRICT" FILED FOR RECORD IN BOOK 146 OF MAPS, PAGE 51 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF LOT 1 AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT MAP NO. 3233, SUBURBAN ESTATES" FILED FOR RECORDS IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK 153 OF MAPS AT PAGE 32, SAID POINT ALSO BEING AN THE NORTHERLY LINE OF INVERNESS WAY (62.00 FEET WIDE);

THENCE, CONTINUING ALONG THE NORTHERLY LINE OF INVERNESS WAY S. 89° 55' 00" E., TO A POINT ALONG THE EASTERLY LINE OF THE AFOREMENTIONED 25.032 ACRE PARCEL, A DISTANCE OF 660.00 FEET;

THENCE, ALONG THE EASTERLY LINE OF SAID 25.032 ACRE PARCEL N. 0° 04' 05" W., 618.52 FEET TO A POINT OF BEGINNING OF A CURVE TO THE RIGHT ON THE SOUTHERLY LINE OF HARROW WAY (62.00 FEET WIDE), SAID POINT ALSO BEING THE SOUTHERNMOST CORNER OF THAT PARCEL DEDICATED FOR STREET PURPOSES IN A DEED FROM CUPERTINO UNION SCHOOL DISTRICT TO THE CITY OF SUNNYVALE, RECORDED IN BOOK 8716 OF RECORDS ON PAGE 63;

THENCE, ALONG THE SOUTHERLY LINE OF HARROW WAY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 82.00 FEET THAT BEARS N. 38° 03' 00" E., A CENTRAL ANGLE OF 8° 08' 11", A DISTANCE OF 11.65 FEET;

THENCE, LEAVING SAID CURVE, PARALLEL WITH THE CENTERLINE OF DUNHOLME WAY (FORMERLY LAUREL AVENUE, TAKEN AS THE BASIS OF BEARING FOR THIS DESCRIPTION) N. 89° 55' 00" W., A DISTANCE OF 650.71 FEET TO THE NORTHEASTERLY MOST CORNER OF TRACT 3233;

THENCE, ALONG THE EASTERLY LINE OF SAID TRACT 3233, S. 0° 04' 05" E., A DISTANCE OF 626.31 FEET TO THE POINT OF BEGINNING, BEING A PORTION OF LOT 5 AS SHOWN ON MAP FILED IN BOOK M OF MAPS AT PAGE 36.

APN: 309-37-003

State of California)
County of _____)

On _____ before me, _____ personally appeared
_____ , _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, _____ personally appeared
_____ , _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment B

Current process for consideration of cellular antennas in parks and recreational facilities is guided by both City Policy and Administrative Practice as follows:

1. A cellular company determines the need to increase service coverage in a particular neighborhood and contacts the City regarding a possible use on City property. The company is referred to the Department of Information Technology where elements (term, responsibilities, fees, etc.) are discussed with the input of Parks and Recreation Department and Planning Division staff. Contract language is reviewed by City Manager and City Attorney staff. City Planner(s) consider aspects of Use Permits for the facility. Both Lease Agreements for land use and Use Permits for use of parks land are governed by current City Policy.
2. Administrative Practices guide Parks and Recreation staff discussions with the proposing company regarding what potential improvements may be considered along with the proposed installation and lease. Common improvements would include, but are not limited to, replacement of aging facilities, landscapes and structures such as maintenance buildings, snack shacks, storage buildings and score booths at sports fields. If it appears that an installation could be beneficial to the community as a whole, Parks and Recreation Department staff facilitate public input meeting(s) with near neighbors of the proposed park or recreational facility. A summary report is provided for the Parks and Recreation Commission and the project is placed on the Commission's agenda for review.
3. Continuing the Administrative Practices, the Parks and Recreation Commission reviews the proposed project, provides an additional public input opportunity and makes recommendation(s) to the Planning Commission.
4. Consistent with City Policy, the City Planner assigned to the project prepares a report to the Planning Commission, provides public notice and schedules the project for the Planning Commission agenda.
5. Following all required public notice and publishing of the agenda, the Planning Commission considers the applicant's request for a Use Permit for the proposed project along with Parks and Recreation Commission input, may require condition(s), and then approves or denies the use.

6. Following Planning Commission action (conditions, approval or denial), anyone aggrieved by the decision (including Council) may appeal the action. Such an appeal requires an application fee [Council excepted] and results in a further review by City Council and a final action that may confirm Planning Commission's action or alter Planning Commission's action as Council desires.

7. Concurrent with the above steps, elements of a Lease Agreement are negotiated between the City and the cellular provider until both the City Manager and the proposing company's representatives are satisfied with all aspects of the Lease. Although not required by City Policy, staff then follows the Administrative Practice as the Lease Agreement is provided for Council review and additional approval during a regularly scheduled City Council meeting.

8. Consistent with City Policy, a Building Permit can be issued to begin actual construction only after all of the above steps have been successfully completed and the Lease Agreement is approved by the City Manager.