



**Council Meeting: November 18 , 2008**

**SUBJECT: Lease Between the City of Sunnyvale and T-Mobile USA, Inc.,  
of Ground Space at Ponderosa 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 Ponderosa 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 \$33,720 annually, 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 at Ponderosa Park.

**BACKGROUND**

T-Mobile contacted the City to propose the construction of a wireless antenna project to enhance communication for their customers in the Ponderosa 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 April 11, 2007 the Parks and Recreation Commission recommended that the Planning Commission approve T-Mobile's Use Permit. The Planning Commission adopted T-Mobile's Negative Declaration and approved the related Use Permit on March 10, 2008, including several Final Conditions of Approval (Attachment "B"). Included in these Final Conditions of Approval is a requirement that the emergency generator be placed in front of the City owned enclosure to mitigate noise impacts on homes in the immediate neighborhood and that the applicant's equipment enclosure shall be vaulted.

## **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 includes approximately 344 square feet of ground space at Ponderosa Park for the construction of a new telecommunication facility consisting of an underground equipment vault, a 69' tall monopine, i.e. a "faux tree pole", with six panel antennas near the top of the pole. The project also includes access to the monopine from Henderson Avenue and a connecting path from the monopine to the equipment storage vault. The proposed project is located at 811 Henderson Ave.

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 \$33,720 per year, which will be deposited to the Community Recreation Fund. The rent will be adjusted by 4% annually throughout the life of the lease. T-Mobile will provide a \$20,000 cash deposit that will be forfeited if the project has not been completed within two years of final execution of the lease agreement.

The initial term of the lease is five (5) 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 Ponderosa Park neighborhood and will support existing City Council Policy on this subject. The lease will also provide ongoing financial support of \$33,720 annually to the Community Recreation Fund and will provide a new park maintenance storage shed.

#### **FISCAL IMPACT**

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

The City will receive \$33,720 annually. The rent will be increased annually by 4%. Over the maximum twenty-year term, the City would receive \$1,004,117, after adjustment for the annual increase in revenue. 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 existing maintenance equipment shed at the expense of T-Mobile will save the City approximately \$15,000 in replacement costs.

#### **PUBLIC CONTACT**

##### ***Community Meetings:***

The Applicant and the Parks and Recreation Department staff held two community meetings on March 8, 2007 and March 10, 2007 in order to provide information to the community and to receive input on the proposal.

##### ***Parks and Recreation Commission Public Hearing:***

The Parks and Recreation Department also held a noticed public hearing on April 11, 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 March 10, 2008. In addition, notices were mailed to property owners and residents within 300 feet of the project site for the Planning Commission public hearing.

***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 at Ponderosa 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 Ponderosa 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.

This action will improve cellular communications in the Ponderosa Park neighborhood and will support existing City Council Policy on this subject. The lease will also provide ongoing financial support of \$33,720 annually to the Community Recreation Fund and will provide a park equipment storage shed valued at approximately \$15,000.

Reviewed by:

*for Cheryl Bunnell*

Cuong Nguyen, Director, Department of Information Technology

Prepared by: Cheryl Bunnell, Manager, IT Administration

Reviewed by:

*David Lewis*

David Lewis, Director, Department of Parks and Recreation

Approved by:

*for Steven Walker*

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 at Ponderosa Park
- B. Planning Commission Final Conditions of Approval – Use Permit (Ponderosa Park T-Mobile)
- C. Administrative process for Cell Tower Requests

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**LEASE BETWEEN CITY OF SUNNYVALE  
AND OMNIPOINT COMMUNICATIONS, INC.,  
d/b/a T-MOBILE  
FOR GROUND SPACE AT PONDEROSA PARK**

This Agreement, dated October 31, 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 12920 SE 38<sup>th</sup> Street, Bellevue, WA 98006.

This Agreement is predicated on the following facts.

- A. Lessee has applied for lease of a portion of certain property located within Ponderosa Park of approximately 344 square feet to include an area for an underground vault, a connecting path to a 69-foot monopine, space for a monopine (collectively referred to as "Cell Tower facilities") and access from Henderson Avenue to the cell tower facilities area depicted on Exhibit "B" and as described in the legal description attached as Exhibit "A".
- B. Lessee intends to demolish an existing one hundred eighty (180) square foot city park equipment shed, to construct a new one hundred eighty (180) square foot equipment shed to be used by the City of Sunnyvale for park maintenance purposes and an underground vault to be used by Lessee to store, operate, maintain, repair and remove its equipment.
- C. Lessee has applied for a Use Permit from the City of Sunnyvale which was granted on March 10, 2008, subject to Conditions of Approval which are attached hereto as Exhibit "C".

1. **The Site.** Lessor is the record owner of that certain 9.1 acre parcel of real property located in the State of California, County of Santa Clara, City of Sunnyvale, commonly known as Ponderosa Park, also known as Assessor's Parcel No. 213-27-002 (the "Site"). The description of the Site is contained in Exhibit "A" attached hereto and incorporated by reference.

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 three hundred forty four (344) square feet of ground space ("Premises") for an underground vault, operating equipment, a 69-foot "faux tree" monopine, a utility run to the Cell Tower facilities, a connecting pathway from the equipment building to the monopine and access area from a public right-of-way to the Cell tower infrastructure area. The Cell Tower facilities and the ancillary easements shall be reflected on as-built drawings which will be incorporated into this Lease by reference within sixty (60) days after the construction of the Cell Tower facilities is completed. Lessee, upon obtaining all necessary permits, shall demolish the existing park maintenance building and construct a new one hundred eighty (180) square foot equipment shed to be used by the City of Sunnyvale for park maintenance purposes and an underground vault to be used by Lessee to store,

the equipment shed, the shed shall become the property of City without the need for execution of further documentation.

(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.

3. **Rent.**

- (a) **Initial Term Rent.** Lessee shall pay to Lessor as base rent the sum of Thirty-Four Thousand Eight Hundred (\$34,800.00) in monthly installment of Two Thousand Nine Hundred Dollars (\$2,900.00) due in advance on the first of the month or Lessee may elect to pay annual rent in advance to receive a three percent (3%) discount, for an amount of Thirty Three Thousand Seven Hundred and Twenty Dollars (\$33,720.00) per year payable on the first day of the first month, in advance, following the Commencement Date (defined below) and annually, thereafter.
- (b) **Deposit.** Lessee shall pay to Lessor a security deposit in the amount of Twenty Thousand Dollars (\$20,000.00) ("Security Deposit") which shall be forfeited if Lessee has not completed construction work within two (2) years of the date of the full execution of this Agreement. The deposit will be refunded within 60 calendar days following the completion of construction work, if such construction work is completed within two (2) years of the date of the full execution of this Agreement.
- (c) **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.
- (d) **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%).
- (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 provided in Annual Adjustment to Rent above shall apply.

4. **Term of Lease.** This Lease shall be for an initial term of five (5) 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 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 of: a) 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 b) December 1, 2008, (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 Cell Tower facilities 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 for access to install, construct, maintain, operate, remove and repair Lessee's Cell Tower facilities in and over certain areas at the Site and the following portions of the Site (collectively the "Access Areas"): All Access 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 facilities.
  
8. **Responsibility of Lessee for Maintenance of Monotree and Damage to Access Areas, Facilities and Equipment.** Lessee agrees to perform the following:
  - (a) Provide a minimum of two (2) weeks 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, non-emergency, 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 periodic repair and/or repainting of any portion of the Cell Tower facilities housing Lessee's communications equipment. Lessee shall also repair and/or repaint Cell Tower facilities, which are 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. City acknowledges that it, and not Lessee, will be responsible for the maintenance and repair of the new equipment shed and remove any and all graffiti from such shed.

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.

9. **Surety Bond**

Upon the Commencement Date, Lessee shall deliver to Lessor and shall maintain in full force and effect a removal 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 9 of this Lease. A corporate surety authorized to engage in a surety business in California shall issue the bond.

10. **Protections Against Interference.**

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.

11. **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 Cell Tower facilities are only partially damaged or destroyed and the facilities are still usable as a Wireless Site, (or if neither party shall elect to terminate this Lease pursuant to (a) above), Lessee shall, within a reasonable time, repair the Cell Tower facilities with a reasonable reduction of rent from the time of such partial destruction until the Cell Tower facilities 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 the negligent conduct of 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. 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.
  
12. **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.
  
13. **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, except that City shall have an unrestricted right to access to that portion of the equipment shed used for Park maintenance purposes. In case of emergency, Lessor shall make reasonable efforts to notify Lessee and shall advise Lessee of any such entry promptly thereafter.

14. **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; or
- (b) 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; or
- (c) Lessee determines that the Premises is not appropriate for 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, provided Lessee has removed the monopole, has conveyed title to the underground vault to the City, and has restored the Premises to the condition it existed as of the Commencement Date, reasonable wear and tear and casualty excepted.

15. **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.

16. **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, during the term hereof, make payment of all real property taxes and general and special assessments, if any, 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;
- (d) 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. Notwithstanding the foregoing, Lessor may self-insure for any such insurance; and
- (e) Subject to the provisions of Section 7 above, Lessee shall have access to the Premises from the public right of way commonly known as Henderson Avenue across the Site to the Premises.

17. **Warranties and Covenants of Lessee.** Lessee warrants and covenants that throughout the term of this Lease, Lessee shall maintain commercial 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. The Lessee shall provide a certificate of insurance naming Lessor as an additional insured. The required insurance coverages are contained in the attached Exhibit "D", attached hereto and incorporated herein by reference.

18. **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 the monopole and its equipment. 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.

19. **Surrender.** Upon termination of this Lease, Lessee shall remove the equipment installed at the Premises by Lessee and shall restore 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.

20. **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.

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 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attention: PCS Lease Administrator  
with a copy to: Legal Department
- and, with copies addressed to Lessee at:  
Omnipoint Communications, Inc.  
2880-A Bisso Lane  
Concord, CA 94520  
Attention: Lease Administrator, and  
Attention: Legal Dept.
- (b) to the Lessor at:  
  
City of Sunnyvale  
650 West Olive Avenue  
Sunnyvale, California, 94086  
Attention: Information Technology Manager, Administration
- (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 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, except for releases or spills caused by third parties on the Premises. 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. **Waivers.** Any waiver of any right under this Lease must be in writing and signed by the waiving party.
26. **Written Agreement to Govern.** This Lease is the entire understanding between the parties relating to the subjects it covers.
27. **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.
28. **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.

- 29. **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.
- 30. **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.
- 31. **Compliance with all Laws.** Lessee hereby warrants and covenants that it shall comply with all applicable federal, state and local laws, rules and regulations in connection with its operations under this Lease.

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

**OMNIPOINT COMMUNICATIONS, INC.,**  
a Delaware corporation, d/b/a  
T-Mobile

**CITY OF SUNNYVALE,**  
a Municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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:**

**PARCEL ONE:**

BEGINNING AT A FOUND 3/4" IRON PIPE DISTANT NORTHERLY ALONG THE DIVIDING LINE BETWEEN SECTIONS 31 AND 32, TOWNSHIP 6 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, N. 0° 15' 00" W. 660.00 FEET (660.04 FEET MEASURED) FROM A FOUND 1" IRON PIPE AT THE COMMON CORNER FOR SAID SECTIONS 31 AND 32 AND SECTIONS 5 AND 6, TOWNSHIP 7 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN; THENCE FROM SAID POINT OF BEGINNING RUNNING NORTHERLY ALONG SAID SECTION LINE BETWEEN SECTIONS 31 AND 32 AND ALONG THE CENTERLINE OF HENDERSON ROAD (40 FEET WIDE) AND THE NORTHERLY PROLONGATION THEREOF N. 0° 15' 00" W. 178.45 FEET TO THE NORTHERLY LINE OF LILY AVENUE (40 FEET WIDE, FORMERLY PATTERSON AVENUE, FORMERLY JACKSON AVENUE); THENCE RUNNING WESTERLY ALONG SAID NORTHERLY LINE OF LILY AVENUE AND THE WESTERLY PROLONGATION THEREOF S. 89° 45' 00" W. 24.00 FEET TO A POINT DISTANT WESTERLY 24.00 FEET MEASURED AT RIGHT ANGLES FROM SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, SAID POINT BEING AT THE SOUTHWESTERLY CORNER OF THAT CERTAIN 24.00 FEET WIDE STRIP OF LAND EXCEPTED IN THE DEED FROM JOHN DUCKGEISCHEL, ET UX TO NICK PRIZMICH RECORDED AUGUST 22, 1922 IN BOOK 561 OF DEEDS AT PAGE 112 OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE RUNNING NORTHERLY ALONG A LINE PARALLEL TO SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, N. 0° 15' 00" W. 151.37 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 9.917 ACRE TRACT OF LAND CONVEYED BY JOHN DUCKGEISCHEL, ET UX, TO NICK PRIZMICH IN THE DEED RECORDED AUGUST 22, 1922 IN BOOK 561 OF DEEDS AT PAGE 112 OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE RUNNING WESTERLY ALONG THE NORTHERLY LINE OF SAID LANDS CONVEYED TO PRIZMICH S. 89° 18' 53" W. 576.53 FEET; THENCE LEAVING SAID NORTHERLY LINE AND RUNNING SOUTHERLY S. 1° 05' 20" E. 329.24 FEET TO THE SOUTHERLY LINE OF SAID 9.917 ACRE TRACT; THENCE RUNNING EASTERLY ALONG SAID SOUTHERLY LINE N. 89° 23' 15" E. 595.70 FEET TO THE POINT OF BEGINNING.

**PARCEL TWO:**

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 31, T.6.S.R.1.W., M.D.B.&M., SAID NORTHEAST CORNER BEING DISTANT NORTHERLY ALONG THE DIVIDING LINE BETWEEN SECTIONS 31 AND 32, T.6.S.R.1.W., M.D.B.&M., N. 0° 15' 00" W. 1220.00 FEET (1220.04 FEET MEASURED) FROM A FOUND 1" IRON PIPE AT THE COMMON CORNER FOR SAID SECTIONS 31 AND 32 AND SECTIONS 5 AND 6, T.7.S.R.1.W., M.D.B.&M.; THENCE FROM SAID POINT OF BEGINNING RUNNING WESTERLY ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 31, S. 89° 21' 19" W. 605.36 FEET TO A POINT DISTANT EASTERLY THEREON N. 89° 21' 19" E. 724.28 FEET FROM A FOUND OLD 2"X2" REDWOOD HUB AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 31; THENCE LEAVING SAID NORTHERLY LINE AND RUNNING SOUTHERLY S. 1° 05' 20" E. 330.43 FEET TO THE NORTHERLY LINE OF THAT CERTAIN 9.917 ACRE TRACT OF LAND CONVEYED BY JOHN DUCKGEISCHEL, ET UX, TO NICK PRIZMICH BY DEED RECORDED AUGUST 22, 1922 IN BOOK 561 OF DEEDS AT PAGE 112 OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE RUNNING EASTERLY ALONG SAID NORTHERLY LINE OF THE LANDS CONVEYED TO PRIZMICH N 89° 18' 53" E. 576.53 FEET TO THE NORTHEASTERLY CORNER THEREOF, AND DISTANT WESTERLY 24.00 FEET MEASURED AT RIGHT ANGLES FROM THE HEREINABOVE SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32; THENCE RUNNING SOUTHERLY ALONG A LINE PARALLEL TO SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, S. 0° 15' 00" E. 151.37 FEET TO THE INTERSECTION THEREOF WITH THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LILY AVENUE (40 FEET WIDE, FORMERLY PATTERSON AVENUE, FORMERLY JACKSON AVENUE); THENCE RUNNING EASTERLY ALONG LAST SAID WESTERLY PROLONGATION AND THE SAID NORTHERLY LINE OF LILY AVENUE N 89°

45° 00' E. 24.00 FEET TO THE SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, SAID DIVIDING LINE BEING ALSO IN THE NORTHERLY PROLONGATION OF THE CENTERLINE OF HENDERSON AVENUE (40 FEET WIDE); THENCE RUNNING NORTHERLY ALONG SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, N. 0° 15' 00" W. 481.55 FEET TO THE POINT OF BEGINNING.

APN: 213-27-002

**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:





**Final Conditions of Approval - The Permit Ponderosa Park, Table 1/1**  
 Approved by Planning Commission on March 10<sup>th</sup>, 2008

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittees expressly accept and agree to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. **GENERAL CONDITIONS**
  - A. Any major site and architectural plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing except that minor changes of the original approval shall be subject to approval at staff level by the Director of Community Development.
  - B. The Conditions of Approval shall be reproduced on a page of the plans submitted for a building permit for this project, with annotated comments indicating how conditions have been met.
  - C. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
  - D. The Use Permit shall be subject to annual renewal. If the annual approval is not credited, unless a written request for an extension is received prior to expiration date.
  - E. Every owner or operator of a wireless telecommunication facility shall obtain and maintain at all times a sign mounted on the facility, in plain view of the public, containing the name of the owner or operator, the chain link equipment contact telephone number, the number and emergency contact telephone number.
  - F. Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including but not limited to, the Federal Communications Commission and Federal Aviation Agency.
  - G. Every facility shall comply with all applicable health requirements and standards pertaining to RF emissions.
  - H. The applicant shall submit to the Director of Community Development at least two reports of field measurements of Radio Frequency Electromagnetic Interference (RF-EMI) and the actual level of emissions after construction of the facility, and 2) the actual level of emissions after the facility is in place and operating at or near full capacity. The

measurements shall be taken at locations specified by the Director of Community Development. The applicant shall conduct a noise study with the generator and telecommunication components or equipment in place, and submit the results to the Director of Community Development for review and approval.

1. The owner or operator of any facility shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City of Sunnyvale. A copy of the information shall be submitted within thirty (30) days of any change of the name or legal status of the owner or operator. This information shall include, but is not limited to the following:

- a) Identity, including name, address and telephone number, and legal status of the owner or operator.
- b) Name and legal status of the person or entity responsible for operating the facility.
- c) Name, address and telephone number of a local contact person for emergencies.
- d) Type of service provided.

J. The owner or operator of any facility shall obtain and maintain at all times a sign mounted on the facility, in plain view of the public, containing the name of the owner or operator, the chain link equipment contact telephone number, the number and emergency contact telephone number.

K. The owner or operator of any facility shall obtain and maintain current at all times a business license as issued by the City.

L. All facilities and related equipment, including lighting, fences, shields, signs, and other structures, shall be designed and constructed to prevent damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or hazards to the public. The facility shall be maintained in good repair as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the city.

M. Each owner or operator of a facility shall routinely and regularly inspect each site to ensure compliance with the standards set forth in the conditions of approval.

N. The wireless telecommunication facility provider shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action, suit, demand, or liability against the city, its boards, commissions, agents, officers, and employees, arising out of or in connection with the project when such claim or action is brought within the time

5. The emergency generator be placed in front of the City owned enclosure when in use to mitigate noise impacts on adjoining properties.

6. The emergency generator shall be placed in front of the City owned enclosure when in use to mitigate noise impacts on adjoining properties.

7. The Director of Community Development shall approve the location and type of generator that will be used on site.

8. The Director of Community Development shall be notified of the request to install the generator.

9. **LANDSCAPE**  
 A. Landscaping shall be installed when the permit is approved. A minimum of 10% of the site shall be landscaped with the telecommunication site.

B. The Landscaping and Irrigation plans shall be submitted to the Director of Community Development prior to issuance of a building permit.

C. Landscaping and Irrigation shall be installed prior to occupancy.

D. Additional landscape including shrubs and ground cover shall be planted around the chain link fence that encloses the equipment area.

E. All landscaping shall be installed in accordance with the approved landscape plan and shall thereafter be maintained in a neat, clean, and well-watered condition.

F. Additional landscaping, including grasses and small shrubs, shall be planted around the entire periphery of the proposed equipment enclosure building.

10. **DEFENSE**  
 A. Artificial structures of different widths must be used at different locations to give the site a more realistic appearance. This shall include the use of artificial structures of different heights and widths that are approved by the Director of Community Development prior to issuance of building permits. The appearance of the site shall be maintained in a neat and well-watered condition as far as possible.

B. The level of the monopole shall not exceed a maximum of 65 feet, as measured to the top of the pole.

C. The equipment enclosure shall be located at a minimum distance of 15 feet from the main property line.

period provided for in applicable state and/or local ordinances. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of contesting in the courts the validity of any such claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

O. No wireless telecommunication facility shall be sited or operated in such a manner as to create a nuisance or a public health hazard, or other such facilities, a potential threat to public health, to land use, or to the safety or health of the community. The facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits. The facility shall be designed, constructed, and operated in accordance with the standard substantially adopted or promulgated by the city, county, the state of California, or the federal government.

P. Each facility shall be operated in such a manner as to minimize noise from any source except an exterior noise level of 60 dB during daytime hours or 50 dB during nighttime hours as measured at the property line. The facility shall be designed, constructed, and operated in accordance with the standard substantially adopted or promulgated by the city, county, the state of California, or the federal government.

Q. No wireless telecommunication facility shall be sited or operated in such a manner as to create a nuisance or a public health hazard, or other such facilities, a potential threat to public health, to land use, or to the safety or health of the community. The facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits. The facility shall be designed, constructed, and operated in accordance with the standard substantially adopted or promulgated by the city, county, the state of California, or the federal government.

R. Each facility shall be operated in such a manner as to minimize noise from any source except an exterior noise level of 60 dB during daytime hours or 50 dB during nighttime hours as measured at the property line. The facility shall be designed, constructed, and operated in accordance with the standard substantially adopted or promulgated by the city, county, the state of California, or the federal government.

DATE	DESCRIPTION	REV
07/27/08	REVISED PER CITY COMMENTS	1
07/22/08	REVISED PER CITY COMMENTS	2

PLEASE CONTACT THE CITY ENGINEERING DEPARTMENT AT 408-299-1111

**J. K. S. ENGINEERING, INC.**

1500 MILLER AVE. SUITE 100  
 SAN JOSE, CA 95128  
 PHONE (408) 299-1111  
 FAX (408) 299-1111

**ONNPOINT**

1833 CARMYK BLDG. 3RD FLOOR  
 CONCORD, CA 94520

**Mobile**

**PONDEROSA PARK**

SF-14969A

811 HENDERSON RD  
 SUNNYVALE, CA 94086

COMPANY JOB NO  
 0808051010

SHEET TITLE  
 FINAL CONDITIONS OF APPROVAL

**T-3**



NO.	DATE	DESCRIPTION	BY
1		INITIALS FOR CDS	
2		REVISIONS FOR CDS COMMENTS	
3		REVISIONS FOR CDS COMMENTS	
4		REVISIONS FOR CDS COMMENTS	

THESE COMMENTS HAVE BEEN REVIEWED AND APPROVED BY:

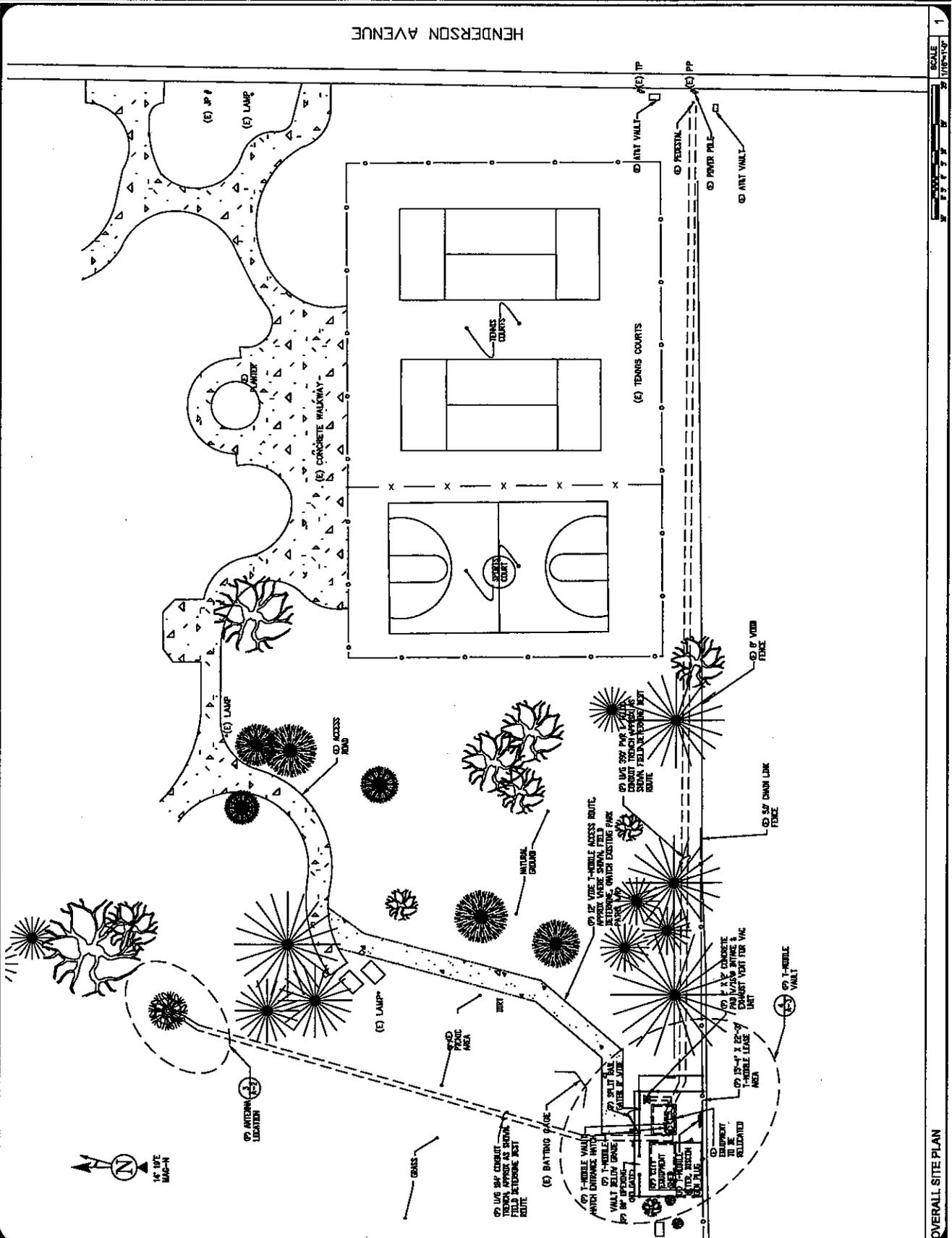
**JES ENGINEERING, INC.**  
 1305 WALTON WAY, SUITE 100  
 DUNEDIN, FL 33511  
 PHONE: (650) 874-1181  
 FAX: (650) 874-1314

**POINT Mobile**  
 1855 GATEWAY BLVD, 5TH FLOOR  
 CONCORD, CA 94520

**PONDEROSA PARK**  
 SF-14969A  
 811 HENDERSON RD  
 SUNNYVALE, CA 94086

COMPANY JOB NO: 080337M0  
 SHEET TITLE: OVERALL SITE PLAN

**A-1**



HENDERSON AVENUE

SCALE: 1" = 10'-0"

OVERALL SITE PLAN

NO.	DATE	DESCRIPTION
1		ISSUED FOR PERMITS
2		ISSUED FOR PERMITS
3		ISSUED FOR PERMITS
4		ISSUED FOR PERMITS

THESE DRAWINGS HAVE BEEN REVIEWED AND APPROVED BY:

**J.F.S.**  
**ENGINEERING, INC.**  
 1500 CALIFORNIA STREET, SUITE 100  
 CHANON, CA 94028  
 PHONE (408) 691-1151  
 FAX (408) 691-1154

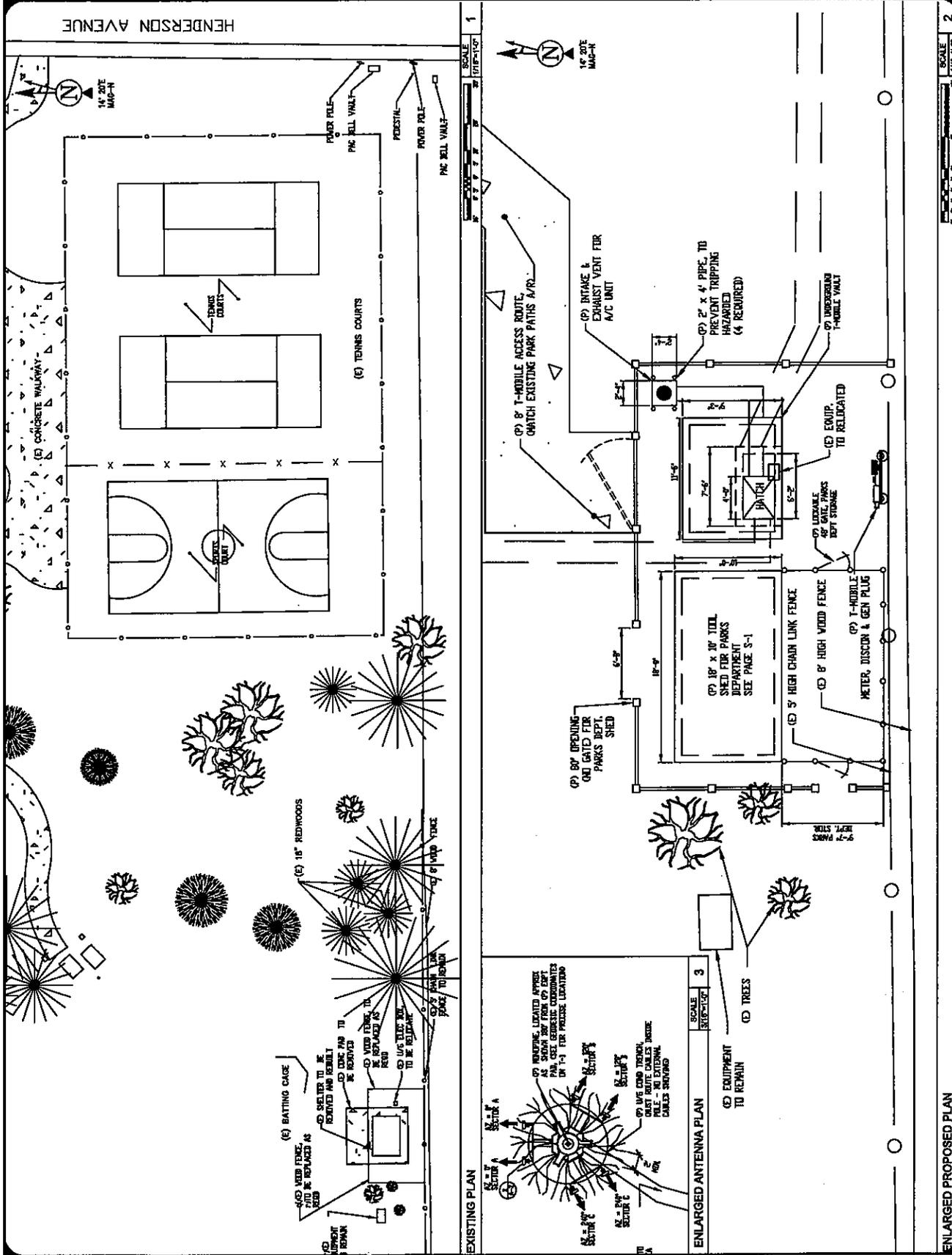
**Mobile**  
 1555 CALIFORNIA BLVD. 9TH FLOOR  
 CHANON, CA 94028

**SOMNIPONT**  
 SF-14969A  
 PARK  
 PONDEROSA  
 811 HENDERSON RD  
 SUNNYVALE, CA 94086

COMPANY JOB NO.  
 08083700

SHEET TITLE  
 EXISTING AND ENLARGED  
 PROPOSED PLANS

**A-2**



ENLARGED ANTENNA PLAN  
 SCALE: AS SHOWN  
 3

ENLARGED PROPOSED PLAN  
 SCALE: AS SHOWN  
 2

DATE	DESCRIPTION	REV
07/21/08	REVISED FOR COMMENTS	2
08/20/08	REVISED FOR COMMENTS	3
09/22/08	REVISED FOR COMMENTS	4

THESE DRAWINGS ARE NOT TO BE REPRODUCED OR COPIED WITHOUT THE WRITTEN PERMISSION OF J.E.S. ENGINEERING, INC.

J.E.S. ENGINEERING, INC.  
 1305 GATEWAY BLVD. SUITE 108  
 CONCORD, CA 94520  
 PHONE: (925) 841-1183  
 FAX: (925) 841-1214

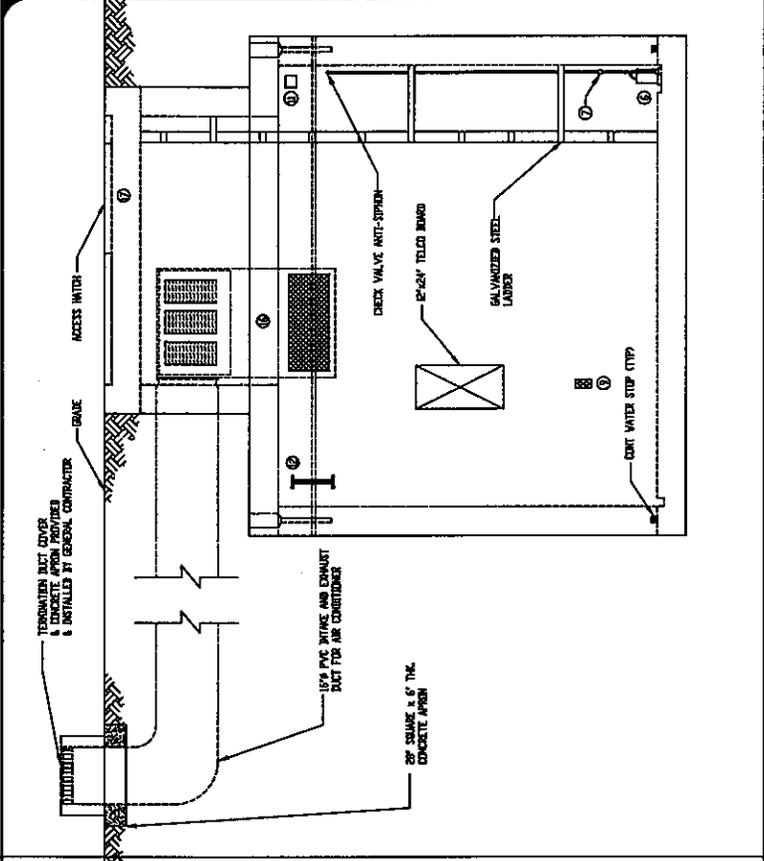
COMPINPOINT  
 MOBILE  
 1355 GATEWAY BLVD. 9TH FLOOR  
 CONCORD, CA 94520

PONDEROSA PARK  
 SF-14969A  
 811 HENDERSON RD  
 SUNNYVALE, CA 94086

COMPANY JOB NO.  
 060837MCO

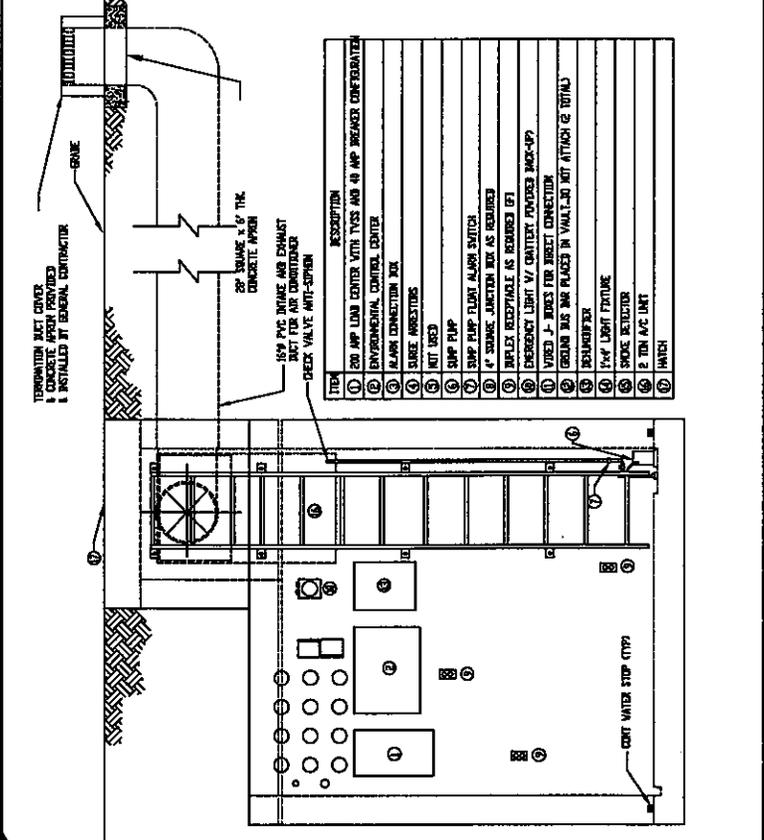
SHEET TITLED  
 PROPOSED EQUIPMENT  
 ELEVATIONS & DETAILS

A-3

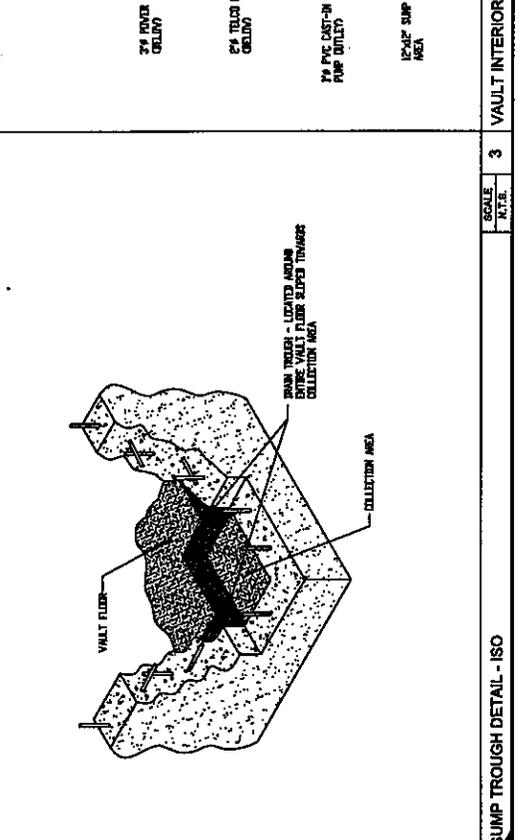
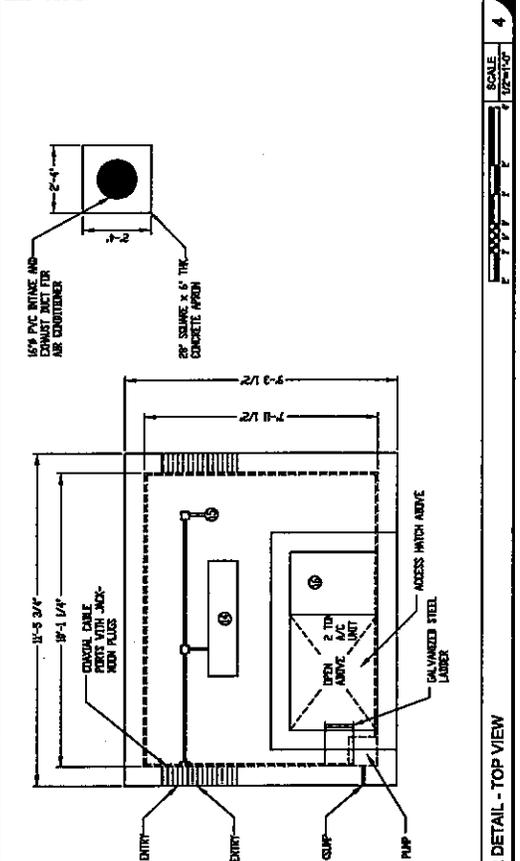


EQUIPMENT ELEVATION WEST VIEW

EQUIPMENT ELEVATION SOUTH VIEW



EQUIPMENT ELEVATION SOUTH VIEW



VAULT INTERIOR DETAIL - TOP VIEW

SUMP TROUGH DETAIL - ISO

ITEM	DESCRIPTION
1	200 AMP LOAD CENTER WITH TIGS AND 40 AMP BREAKER CONFIGURATION
2	ENVIRONMENTAL CONTROL CENTER
3	ALARM CONNECTION BOX
4	SHOCK ARRESTERS
5	NOT USED
6	SUMP PUMP
7	SUMP PUMP FLEET ALARM SWITCH
8	4\"/>

SCALE	DATE
1/8\"/>	





**IN CASE OF  
EMERGENCY  
CALL**

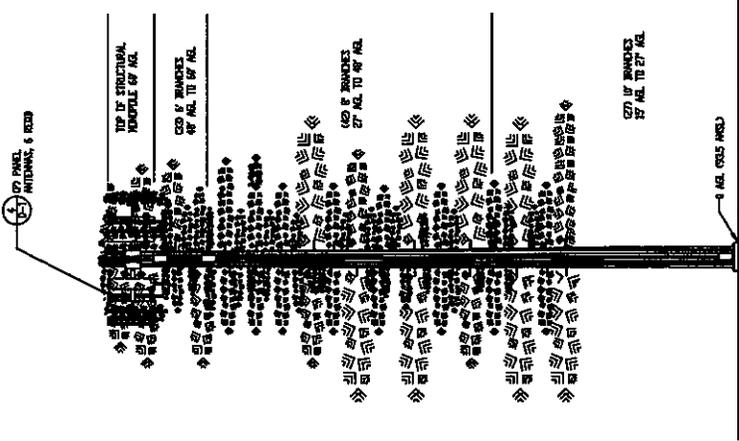
**1-888-662-4662**

Site No: SF-14969A  
**T-MOBILE CARRIER**

PROPOSED T-MOBILE SIGNAGE

SCALE  
1/8" = 1'-0"

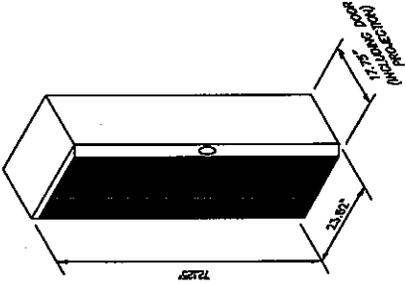
1



TYPICAL MONOPINE STEEL / BRANCH COUNT DETAILS

SCALE  
3/8" = 1'-0"

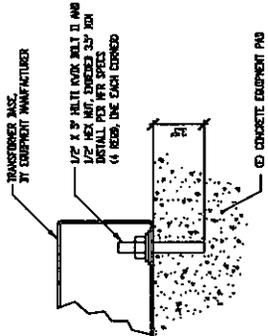
2



ERICSSON INDOOR DIMENSIONS	
CABINET	DEPTH X WIDTH X HEIGHT
DOOR RIS 2206	15.25" X 23.50" X 72.60" (DOOR X DOOR X HEIGHT)
DOOR BASE	15.25" X 23.50" X 3.00" (DOOR X DOOR X THICK)
RU 2000 ANTENNA MOUNT	15.25" X 23.50" X 15.25" (DOOR X DOOR X HEIGHT)

NOTE: SEISMIC ZONE 3 & 4 ANCHORAGE SPECIFICATIONS SHALL BE PROVIDED BY ERICSSON.

ERICSSON INDOOR WEIGHT & FLOOR LOADING	
CABINET	APPROX. MAX. WEIGHT
DOOR RIS 2206	507 LBS (230 KG)
RU 2000 ANTENNA MOUNT	1500 LBS (680 KG)
ERICSSON INDOOR MINIMUM CLEARANCES	
DOOR	MINIMUM CLEARANCE
CABINET REAR AND WALL	0" (0mm)
CABINET RIGHT/LEFT SIDE AND WALL	0" (0mm)
IN FRONT OF THE CABINET	36" (914mm)

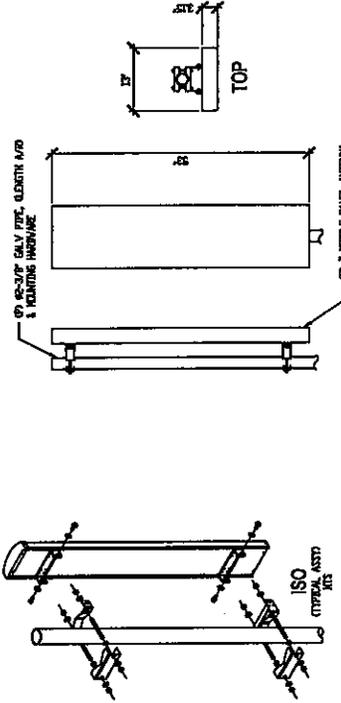


SECTION

PROPOSED T-MOBILE BTS CABINET DETAILS

SCALE  
3/4" = 1'-0"

3



PROPOSED T-MOBILE ANTENNA DETAIL

SCALE  
1/4" = 1'-0"

4

ISSUE STATUS

DATE	DESCRIPTION	BY
01/27/08	REVISED PER COMMENTS	JRS
01/27/08	REVISED PER COMMENTS	JRS
01/27/08	REVISED PER COMMENTS	JRS

PLEASE REFER TO THE  
REVISIONS AND APPROVED BY:

**JRS**  
**ENGINEERING, INC.**

1000 BULLER WAY SUITE 100  
CONCORD, CA 94520  
PHONE (925) 674-1914  
FAX (925) 674-1914

**MONOPINE**  
1555 GAYLARD BLVD, 5TH FLOOR  
CONCORD, CA 94520

**T-Mobile**

**PONDEROSA**  
**PARK**  
SF-14969A  
811 HENDERSON RD  
SUNNYVALE, CA 94086

COMPANY JOB NO.  
00082700

SHEET TITLE  
DETAIL SHEET

**D-1**







NO.	DATE	DESCRIPTION	REV.
1	07/20/01	ISSUE FOR PERMIT	1
2	08/01/01	REVISED PER COMMENTS	2
3	08/01/01	REVISED PER COMMENTS	3
4	08/01/01	REVISED PER COMMENTS	4

ISSUE STATUS

THESE DRAWINGS HAVE BEEN REVIEWED AND APPROVED BY:

**J.F.S.**  
ENGINEERING, INC.

1500 WALKER WAY, SUITE 100  
CONCORD, CA 94520  
PHONE (925) 874-1114  
FAX (925) 874-1114

**POINT**  
**Mobile**

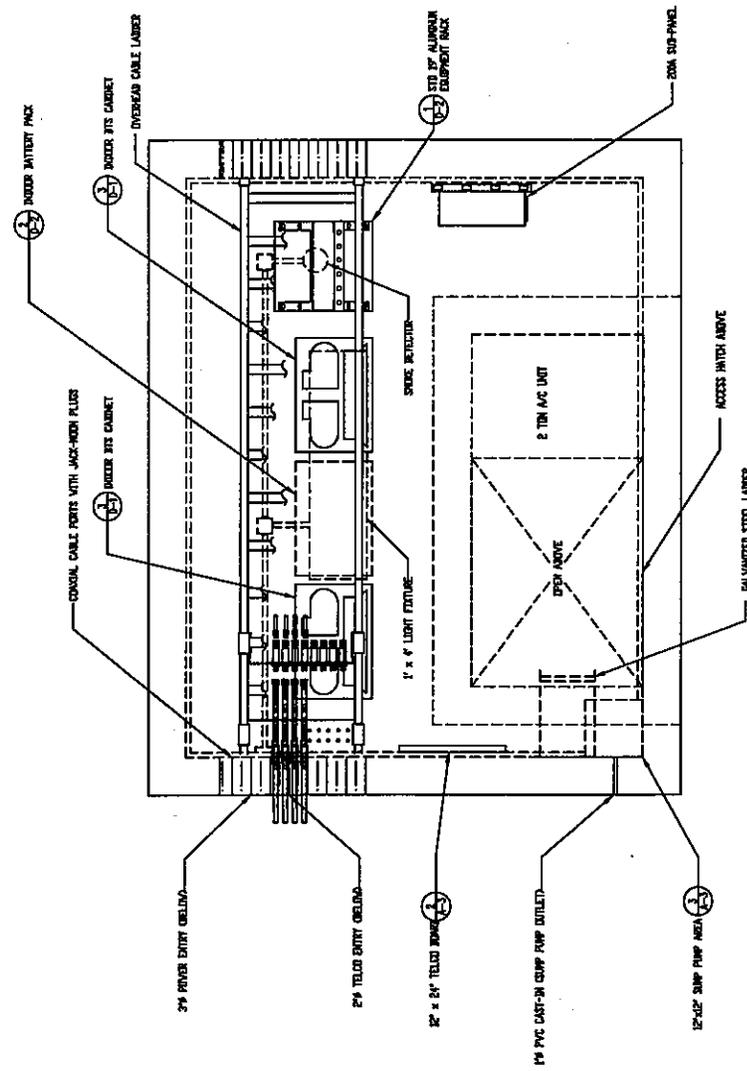
1655 GATEWAY BLVD, 9TH FLOOR  
CONCORD, CA 94520

**PONDEROSA**  
**PARK**  
SF-14969A  
811 HENDERSON RD  
SUNNYVALE, CA 94086

COMPANY JOB NO.  
090821M0

SHEET TITLE  
EQUIPMENT  
DETAIL

**E-3**



TOP VIEW







ISSUE STATUS			
A	DATE	DESCRIPTION	BY
1	07/27/88	ISSUE FOR PERMITS	3
2	08/22/88	REVISION	4
3			
4			

**J.P.S.**  
**ENGINEERING, INC.**  
 1309 WILSON AVE., SUITE 100  
 CONCORD, CA 94520  
 PHONE (925) 834-1181  
 FAX (925) 834-1184

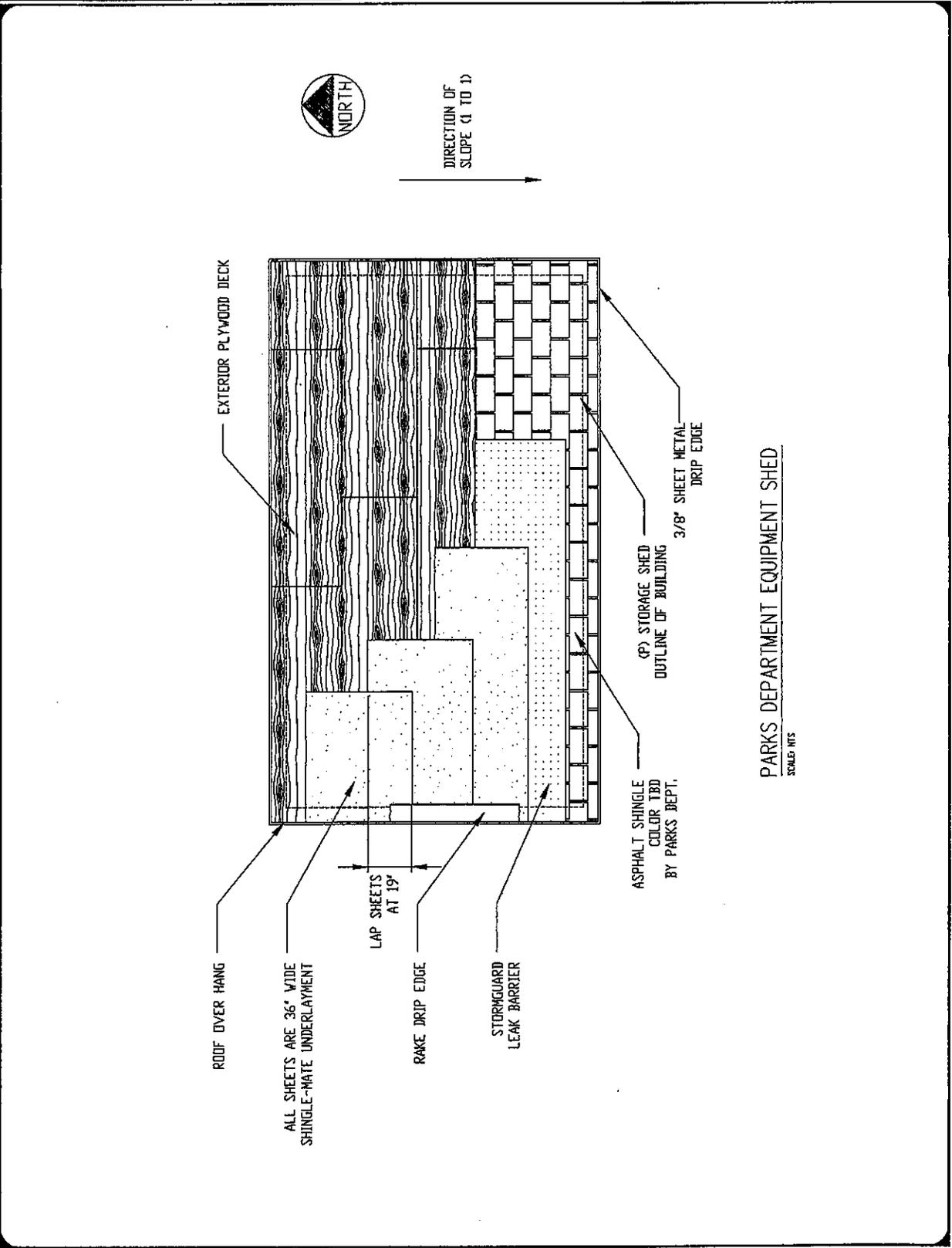
**MOBILE**  
 1833 CALIFORNIA BLVD. 9TH FLOOR  
 CONCORD, CA 94520

**PONDEROSA**  
**PARK**  
 SF-14969A  
 811 HENDERSON RD  
 SUNNYVALE, CA 94086

COMPANY JOB NO.  
 00832100

SHEET TITLE  
 PARKS DEPT  
 STORAGE SHED DETAILS

**S-2**



**PARKS DEPARTMENT EQUIPMENT SHED**  
 SCALE: NTS

However, it is expressly agreed and understood by and between the Lessor and Lessee that the exact and precise location of the Lessee'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 Lessor and Lessee that the precise location of the Premises as shown on Exhibit "B" will be replaced by as-built drawings pursuant to the terms of the Lease Agreement. An amended Exhibit "B" containing as-built drawings for the Cell Tower facilities will be provided by the Lessee and attached to the lease in place of the existing Exhibit "B", a copy of which will be provided to the Lessor for review prior to being incorporated into the lease.

**INSURANCE REQUIREMENTS**

Lessee shall procure and maintain for the duration of the Agreement insurance or equivalent self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Licensee, his agents, representatives, or employees. Commercial General Liability and Umbrella Policies shall name the City of Sunnyvale, its officers, employees, agents and volunteers as additionally insured. A certificate of insurance must be provided to the City of Sunnyvale evidencing the coverage below. Additional insured endorsements must accompany the certificate of insurance. All policies of insurance shall be primary and not contributing as to Lessee's negligence.

Minimum Scope and Limits of Insurance Lessee shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation** and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Umbrella Policy. \$3,000,000 per occurrence.**

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The Lessee agrees to indemnify Lessor for the payment of any deductible under Lessee's policy in the event of a covered claim. Lessee shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and **automobile liability** policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additionally insured with respect to liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Lessee's insurance shall be primary as to Lessee's negligence. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be in excess of the Lessee's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not effect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Lessee shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work. Additional insured endorsements shall accompany the certificate of insurance.

City of Sunnyvale  
Risk & Insurance  
October 30, 2008

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

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**MEMORANDUM OF LEASE**

This Memorandum of Lease with option ("Memorandum") dated as of October 31, 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 five (5) 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 December 1, 2008. 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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2008

LESSOR:

**CITY OF SUNNYVALE,**  
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:**

**PARCEL ONE:**

BEGINNING AT A FOUND 3/4" IRON PIPE DISTANT NORTHERLY ALONG THE DIVIDING LINE BETWEEN SECTIONS 31 AND 32, TOWNSHIP 6 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, N. 0° 15' 00" W. 660.00 FEET (660.04 FEET MEASURED) FROM A FOUND 1" IRON PIPE AT THE COMMON CORNER FOR SAID SECTIONS 31 AND 32 AND SECTIONS 5 AND 6, TOWNSHIP 7 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN; THENCE FROM SAID POINT OF BEGINNING RUNNING NORTHERLY ALONG SAID SECTION LINE BETWEEN SECTIONS 31 AND 32 AND ALONG THE CENTERLINE OF HENDERSON ROAD (40 FEET WIDE) AND THE NORTHERLY PROLONGATION THEREOF N. 0° 15' 00" W. 178.45 FEET TO THE NORTHERLY LINE OF LILY AVENUE (40 FEET WIDE, FORMERLY PATTERSON AVENUE, FORMERLY JACKSON AVENUE); THENCE RUNNING WESTERLY ALONG SAID NORTHERLY LINE OF LILY AVENUE AND THE WESTERLY PROLONGATION THEREOF S. 89° 45' 00" W. 24.00 FEET TO A POINT DISTANT WESTERLY 24.00 FEET MEASURED AT RIGHT ANGLES FROM SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, SAID POINT BEING AT THE SOUTHWESTERLY CORNER OF THAT CERTAIN 24.00 FEET WIDE STRIP OF LAND EXCEPTED IN THE DEED FROM JOHN DUCKGEISCHEL, ET UX TO NICK PRIZMICH RECORDED AUGUST 22, 1922 IN BOOK 561 OF DEEDS AT PAGE 112 OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE RUNNING NORTHERLY ALONG A LINE PARALLEL TO SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, N. 0° 15' 00" W. 151.37 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 9.917 ACRE TRACT OF LAND CONVEYED BY JOHN DUCKGEISCHEL, ET UX, TO NICK PRIZMICH IN THE DEED RECORDED AUGUST 22, 1922 IN BOOK 561 OF DEEDS AT PAGE 112 OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE RUNNING WESTERLY ALONG THE NORTHERLY LINE OF SAID LANDS CONVEYED TO PRIZMICH S. 89° 18' 53" W. 576.53 FEET; THENCE LEAVING SAID NORTHERLY LINE AND RUNNING SOUTHERLY S. 1° 05' 20" E. 329.24 FEET TO THE SOUTHERLY LINE OF SAID 9.917 ACRE TRACT; THENCE RUNNING EASTERLY ALONG SAID SOUTHERLY LINE N. 89° 23' 15" E. 595.70 FEET TO THE POINT OF BEGINNING.

**PARCEL TWO:**

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 31, T.6.S.R.1.W., M.D.B.&M., SAID NORTHEAST CORNER BEING DISTANT NORTHERLY ALONG THE DIVIDING LINE BETWEEN SECTIONS 31 AND 32, T.6.S.R.1.W., M.D.B.&M., N. 0° 15' 00" W. 1220.00 FEET (1220.04 FEET MEASURED) FROM A FOUND 1" IRON PIPE AT THE COMMON CORNER FOR SAID SECTIONS 31 AND 32 AND SECTIONS 5 AND 6, T.7.S.R.1.W., M.D.B.&M.; THENCE FROM SAID POINT OF BEGINNING RUNNING WESTERLY ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 31, S. 89° 21' 19" W. 605.36 FEET TO A POINT DISTANT EASTERLY THEREON N. 89° 21' 19" E. 724.28 FEET FROM A FOUND OLD 2"X2" REDWOOD HUB AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 31; THENCE LEAVING SAID NORTHERLY LINE AND RUNNING SOUTHERLY S. 1° 05' 20" E. 330.43 FEET TO THE NORTHERLY LINE OF THAT CERTAIN 9.917 ACRE TRACT OF LAND CONVEYED BY JOHN DUCKGEISCHEL, ET UX, TO NICK PRIZMICH BY DEED RECORDED AUGUST 22, 1922 IN BOOK 561 OF DEEDS AT PAGE 112 OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE RUNNING EASTERLY ALONG SAID NORTHERLY LINE OF THE LANDS CONVEYED TO PRIZMICH N 89° 18' 53" E. 576.53 FEET TO THE NORTHEASTERLY CORNER THEREOF, AND DISTANT WESTERLY 24.00 FEET MEASURED AT RIGHT ANGLES FROM THE HEREINABOVE SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32; THENCE RUNNING SOUTHERLY ALONG A LINE PARALLEL TO SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, S. 0° 15' 00" E. 151.37 FEET TO THE INTERSECTION THEREOF WITH THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF LILY AVENUE (40 FEET WIDE, FORMERLY PATTERSON AVENUE, FORMERLY JACKSON AVENUE); THENCE RUNNING EASTERLY ALONG LAST SAID WESTERLY PROLONGATION AND THE SAID NORTHERLY LINE OF LILY AVENUE N 89°

45° 00' E. 24.00 FEET TO THE SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, SAID DIVIDING LINE BEING ALSO IN THE NORTHERLY PROLONGATION OF THE CENTERLINE OF HENDERSON AVENUE (40 FEET WIDE); THENCE RUNNING NORTHERLY ALONG SAID DIVIDING LINE BETWEEN SECTIONS 31 AND 32, N. 0° 15' 00" W. 481.55 FEET TO THE POINT OF BEGINNING.

APN: 213-27-002

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 \_\_\_\_\_ )

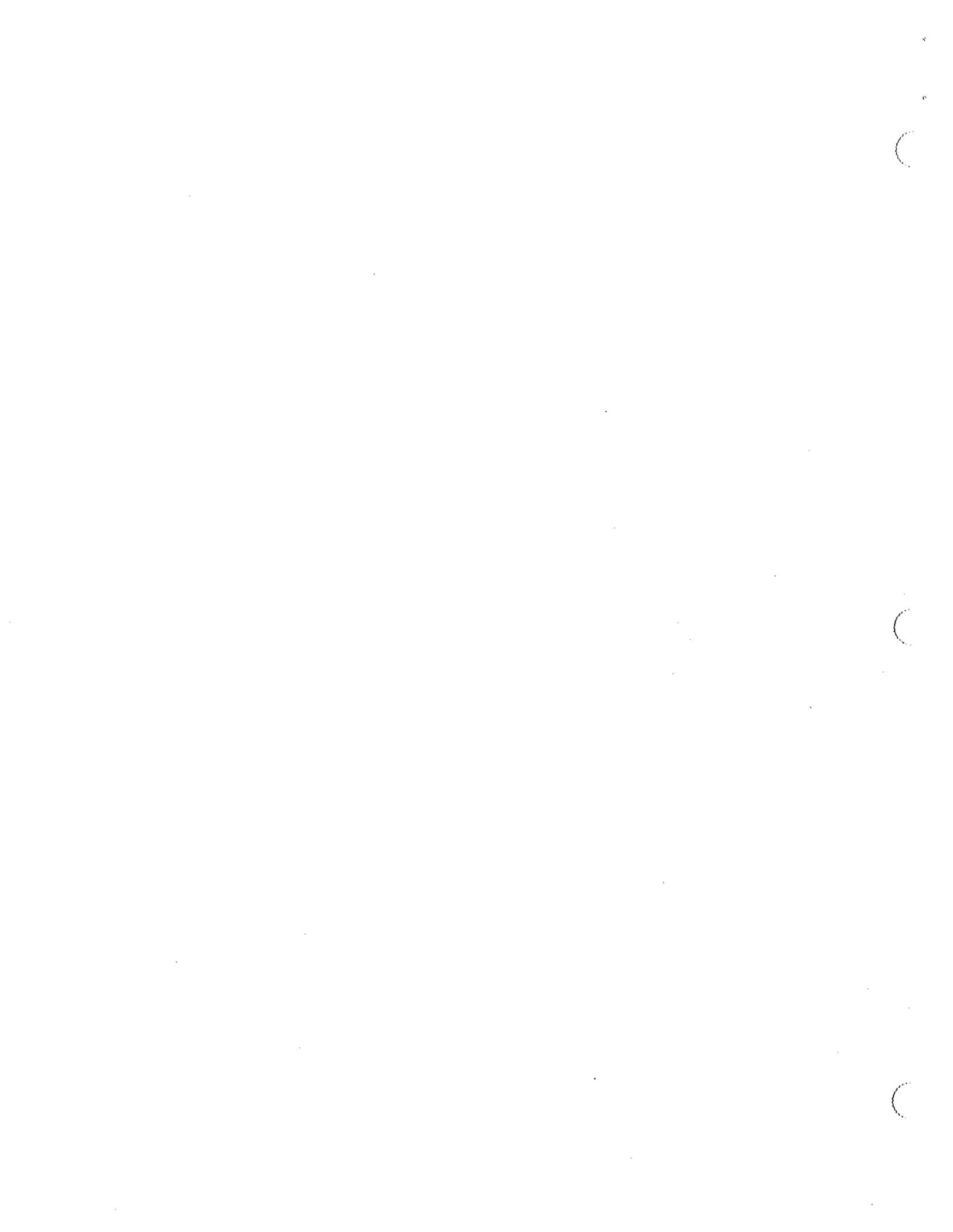
On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared  
\_\_\_\_\_

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)





**Recommended Conditions of Approval - Use Permit**

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

**1. GENERAL CONDITIONS**

- A. Any major site and architectural plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing except that minor changes of the approved plans may be approved at staff level by the Director of Community Development.
- B. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- C. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- D. The Use Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- E. Every owner or operator of a wireless telecommunications facility shall renew the facility permit at least every five (5) years from the date of initial approval.
- F. Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including but not limited to, the Federal Communications Commission and Federal Aviation Agency.
- G. Certification must be provided that the proposed facility will at all times comply with all applicable health requirements and standards pertaining to RF emissions.
- H. The applicant shall submit to the Director of Community Development at least two reports of field measurements of Radio Frequency Emissions showing: 1.) The ambient level of RF emissions before construction of the facility, and 2.) the actual level of emissions after the facility is in place and operating at or near full capacity. The measurements shall be taken at locations specified by the Director of Community Development.

- I. The owner or operator of any facility shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. Applicant shall notify city of any changes to the information submitted within thirty (30) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to the following:
  - a) Identity, including name, address and telephone number, and legal status of the owner of the facility including official identification numbers and FCC certification, and if different from the owner, the identity and legal status of the person or entity responsible for operating the facility.
  - b) Name, address and telephone number of a local contact person for emergencies.
  - c) Type of service provided.
- J. The owner or operator shall maintain, at all times, a sign mounted on the chain link equipment enclosure showing the operator name, site number and emergency contact telephone number.
- K. The owner or operator of any facility shall obtain and maintain current at all times a business license as issued by the City.
- L. All facilities and related equipment, including lighting, fences, shields, cabinets, and tree poles, shall be maintained in good repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the city.
- M. Each owner or operator of a facility shall routinely and regularly inspect each site to ensure compliance with the standards set forth in the Telecommunications Ordinance.
- N. The wireless telecommunication facility provider shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the city from participating in a defense of any claim, action, or proceeding if

the city bears its own attorney's fees and costs, and the city defends the action in good faith.

- O. Facility lessors shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their use within the city. This liability shall include cleanup, intentional injury or damage to persons or property. Additionally, lessors shall be responsible for any sanctions, fines, or other monetary costs imposed as a result of the release of pollutants from their operations. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic waves and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- P. Wireless telecommunication facility operators shall be strictly liable for interference caused by their facilities with city communication systems. The operator shall be responsible for all labor and equipment costs for determining the source of the interference, all costs associated with eliminating the interference, (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 city attributable to the interference.
- Q. No wireless telecommunication facility shall be sited or operated in such a manner that is poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end no facility or combination of faculties shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any more restrictive standard subsequently adopted or promulgated by the city, county, the state of California, or the federal government.
- R. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise. At no time shall equipment noise from any source exceed an exterior noise level of 60 dB during daytime hours or 50 dB during nighttime hours as measured at the property line. Backup generators shall be allowed only during emergencies, and shall not be tested on weekends or holidays, or between the hours of 10:00 p.m. and 7:00 a.m. on weekday nights.
- S. Back up generators shall be located in front of the doors of the equipment enclosure (north face of the structure) to reduce noise impacts on single family homes located nearby.

**2. LANDSCAPING**

- A. No tree removal permit shall be approved where the reason for removal is interference with the telecommunications site.
- B. The Landscape and irrigation plans shall be submitted to the Director of Community Development subject to approval by the Director of Community Development prior to issuance of a Building Permit.
- C. Landscaping and irrigation shall be installed prior to occupancy.
- D. Additional vegetation, including shrubs and ground cover, must be planted around the chain link fence that encloses the equipment area
- E. All landscaping shall be installed in accordance with the approved landscape plan and shall thereafter be maintained in a neat, clean, and healthful condition.
- F. Additional landscaping, including grasses and small shrubs, shall be planted around the entire periphery of the proposed equipment enclosure building.

**3. DESIGN**

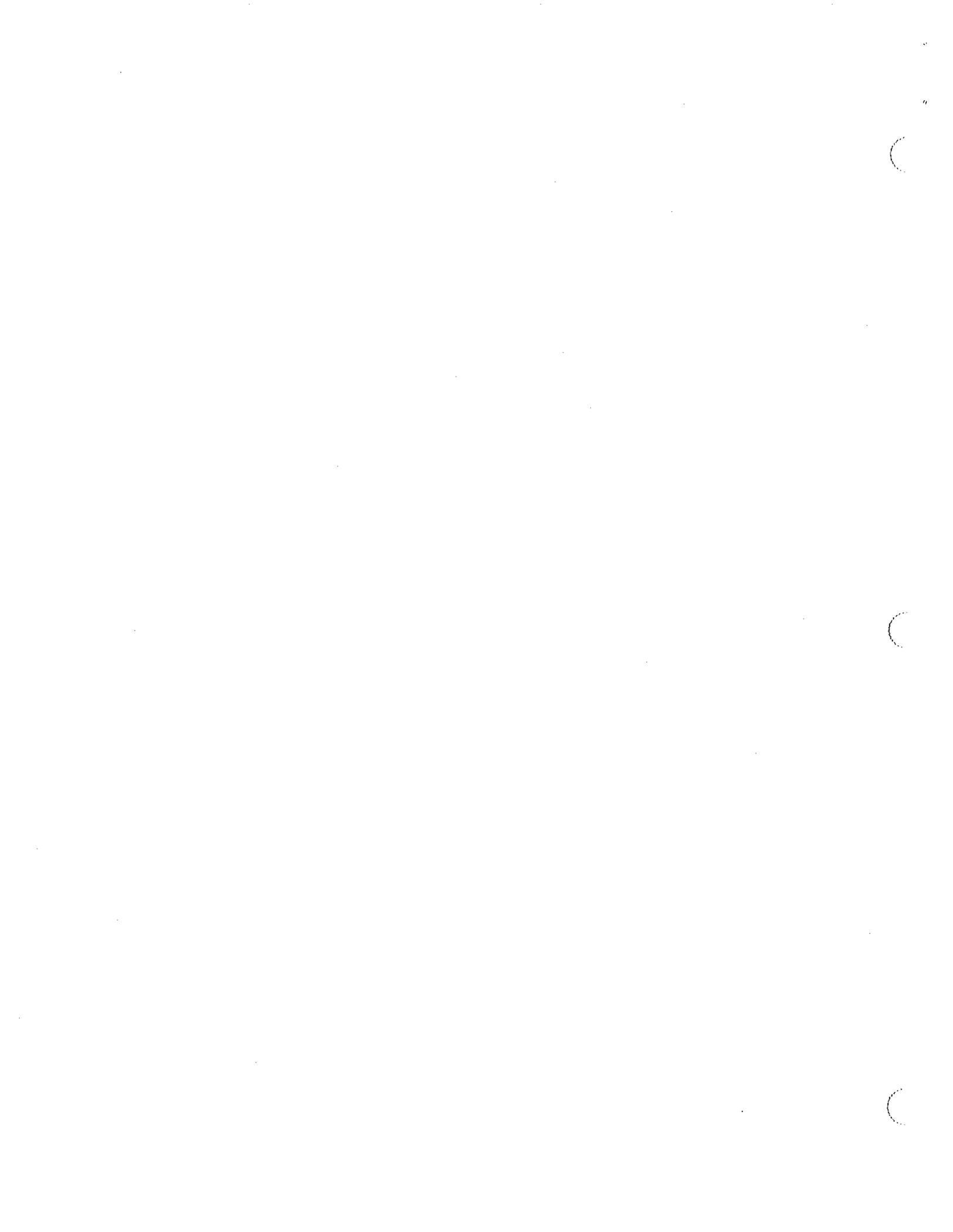
- A. Artificial branches of different widths must be used at different elevations to give the tree a more realistic appearance while still meeting the objective of screening the antennas. Final design shall be reviewed and approved by the Director of Community Development prior to issuance of Building permits.
- B. The total of the monopine shall not exceed a maximum of 65 feet, as measured to the top of the tree.
- C. The equipment enclosure shall be located at a minimum distance of 15 feet from the south property line unless other noise attenuation measures are deemed appropriate.
- D. The air conditioning units shall be located along east wall of the enclosure (facing the tennis courts) at a point farthest away from the single-family homes situated along the south property line of Ponderosa Park.
- E. The City-owned equipment area shall be at least 180 sq. ft. in size. The paint and texture of the proposed equipment enclosure shall be designed to match the existing park maintenance building. Final design shall be reviewed and approved by the Director of Community Development prior to issuance of Building permits.

**4. LIGHTING**

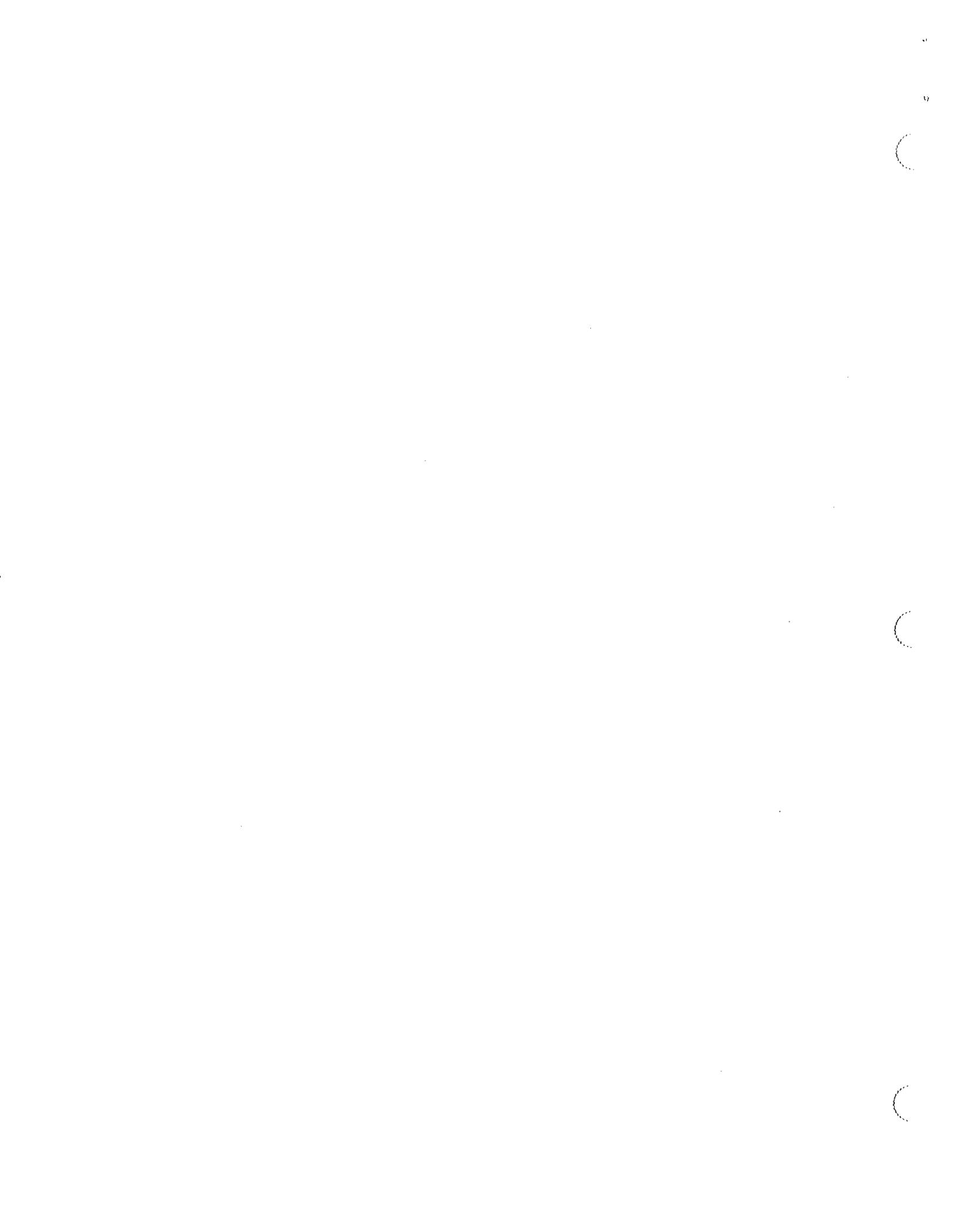
- A. Lights shall have shields to prevent glare onto residential properties.

5. **SIGNS**

- A. All new signs shall be in conformance with Sunnyvale Municipal Code.







## Attachment C

**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.