

RESOLUTION NO. 2015-\_\_\_\_\_

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS FOR LEASE OF SPACE ON AN ELEVATED WATER TANK ON PROPERTY KNOWN AS BLOCK 804, LOT 4, LOCATED ON W. FOREST GROVE ROAD, FOR PLACEMENT OF A TELECOMMUNICATIONS ANTENNA INSTALLATION, AND RESERVING THE RIGHT TO REJECT ANY AND ALL PROPOSALS.

WHEREAS, the City of Vineland owns property known as Block 804, Lot 4, located on W. Forest Grove Road, on which is located a municipal elevated water storage tank; and

WHEREAS, the City of Vineland has been contacted by a telecommunications company interested in the leasing of space at the W. Forest Grove Road water storage tank; and

WHEREAS, the City Council of the City of Vineland desires to offer for lease for placement of a telecommunications antenna installation, in accordance with the terms and conditions set forth in the attached Request for Proposals, space on said elevated water storage tank which is not needed for use by the municipality at this time;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland that:

1. The Council of the City of Vineland shall offer for lease, to the highest bidder by submission of sealed proposals submitted to the Purchasing Board c/o City Clerk of the City of Vineland, 640 E. Wood Street, P.O. Box 1508, Vineland, New Jersey 08362-1508, **for the September 22, 2015 Purchasing Board meeting**, (as instructed in the attached Request for Proposals) of space on the elevated water tank on property known as Block 804, Lot 4, located on W. Forest Grove Road, for a telecommunications antenna installation.
2. The City reserves the right to reject any and all proposals. After receipt of proposals, the Council of the City of Vineland shall consider the proposals received and may elect upon consideration to accept the highest proposal or to reject all proposals. Such acceptance or rejection shall be made by the Council not later than the second regular meeting of the governing body following the deadline for submission of sealed proposals.
3. Special conditions or restrictions on the use of the property are set forth in the attached Request for Proposals and the proposed Communications Antenna Site Lease Agreement on file in the Office of the Business Administrator.
4. The Clerk of the City of Vineland is hereby authorized and directed to publish in the Daily Journal, in accordance with N.J.S.A. 40:12-14(a), a notice setting forth the method of bidding, deadline for submission of sealed proposals, and the terms and conditions herein imposed.

Adopted:

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President of Council

ATTEST:

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City Clerk

## REQUEST FOR PROPOSALS

1. Sealed proposals will be received by the City of Vineland for the lease of space for a communications antenna, equipment building(s) and appurtenances on a portion of property owned by the City of Vineland. **The property is located on Block 804, Lot 4, located on W. Forest Grove Road, and consists of an elevated water storage tank.**

The City of Vineland has entered into a Communications Site Lease Agreements with *New Cingular Wireless PCS, LLC (AT&T)*, for space at the subject site as shown on the attached Lease Area Plan. Also located at this site is Communications Equipment for the City of Vineland Police Department.

The successful Carrier will be responsible for performing a Modulation Study prior to the installation of any antennas and related wireless communications equipment to determine any potential interference to the City's 800 mhz radio system. The successful Carrier will also perform a second study after the installation is complete to determine if there are any noticeable interference or differences.

The intent of this proposal is to ascertain the highest bid for lease of space on the above-referenced property for placement of a telecommunications antenna installation for up to twenty-five years based upon the Minimum Base Rent, as well as annual percentage increases pursuant to Paragraph nine (9).

2. Prospective Carriers shall review the Request for Proposals and proposed Communications Antenna Site Lease Agreement before submitting a proposal, in order that no misunderstanding will exist in regard to the nature and character of the contract. Conditional proposals may be rejected.
3. The City reserves the right to reject all proposals, to waive any formality on proposals received, and to omit any item or items, deemed advisable for the best interests of the City, or to withhold final award of the contract. The City may require annual payments for each year of the lease.
4. If contractor is a corporation, this proposal must be signed by its president, chief executive technical officer, or other authorized official.  
  
If contractor is a partnership, then this proposal must be signed by at least one partner.
5. This proposal must be returned to the City of Vineland with no alterations. Alterations to this proposal will be grounds for rejection.
6. Any questions regarding the proposal or the terms and conditions of the proposal must be submitted to:

Robert E. Dickenson, Jr., Assistant Business Administrator  
City of Vineland  
640 E. Wood Street  
P. O. B ox 1508  
Vineland, New Jersey 08362-1508  
Phone: 856-794-4144/Fax: 856-794-4026

7. Proposals will be received by mail, commercial carrier or hand delivery on the proposal forms provided in the manner designated herein.

Each proposal must be submitted in duplicate and shall be enclosed in an opaque sealed envelope, addressed to "Purchasing Board, c/o City Clerk, City of Vineland, New Jersey", and plainly marked on the outside "**Proposal for Communications Antenna Site – W. Forest Grove Road**", and the name of the bidder, and be delivered to the Council Chambers, City Hall, 640 E. Wood Street, Vineland, New Jersey, at 10:30 a.m. Prevailing Time, Tuesday, **September 22, 2015**, or may be delivered to the office of the City Clerk, City Hall, Vineland, New Jersey before 5:00 p.m., Prevailing Time, Monday, **September 21, 2015**.

8. Insurance Requirements: The successful Carrier shall purchase liability insurance at its own expense and maintain for the duration of this contract such insurance naming the City of Vineland as additional insured. Such insurance shall be issued by a company or companies licensed to do business in the State of New Jersey, and who are Best's Rated "A" or better, and cover the following:

- A Claims under workers compensation, disability benefit and other similar employee benefit acts:
- B Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than his employees:
- C Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- D Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or (2) by any other person;
- E Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- F Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

Workers compensation and employers liability coverage as required by New Jersey law shall be provided.

Limits shall be not less than \$1,000,000 combined single limit, \$5,000,000 aggregate.

Automobile liability insurance shall include owned, non-owned and hired vehicle coverage. Limits shall not be less than \$2,000,000 combined single limit.

If, by the terms of the successful Carrier's insurance, mandatory deductibles are required, the successful Carrier shall be responsible for payment of said deductibles.

9. The term of the proposed lease shall not exceed 25 years which shall include any initial term and any option(s) to extend which may be exercised by the Carrier. The rental payment shall be calculated with a Minimum Base Rent. The Carrier shall also set forth an annual percentage increase above the previous year's Minimum Annual Base Rent ("Annual Percentage Increase"). Carriers may also use a standard, such as the Consumer Price Index, for the annual increase. The standard to be used must be set forth in detail.
10. The successful Carrier will be responsible to apply for and obtain all required City of Vineland Zoning and Land Development and construction permits, and any other permits or licenses required from any governmental agencies.
11. The successful Carrier may propose steps to mitigate the adverse impacts from the installation of the tenant facilities. Such steps may include, but not be limited to, neutral painting, medium intensity lighting, to the extent permitted by FCC regulations, use of natural vegetation or landscaping, use of compatible fencing. Each Carrier shall provide a description of the mitigation techniques to be employed by it and will describe each step that it agrees to take to provide the mitigation.
12. The proposal must be returned in its entirety in order to be considered for an award.
13. Each proposal must be accompanied by the items requested below. Failure to provide these items and the entire proposal package may be cause for rejecting this proposal.
  - A. Proposal Sheet
  - B. Non-Collusion Affidavit
  - C. List of names and addresses of all stockholders in the corporation or partnership who own ten percent (10%) or more of its stock- "Ownership Disclosure".

**PROPOSAL SHEET**

Communications Antenna Site Lease

1. Base Annual Rental Payment to the City of Vineland \$ \_\_\_\_\_
  
2. Lease Term (may also specify Carrier's option to Renew so long as initial term and all extension terms shall not exceed 25 years). \_\_\_\_\_ Years
  
3. Annual increase in Base Annual Rental Payment. Carriers may use either a percentage or may make reference to a standard such as the Consumer Price Index. If a standard is used a detailed description of the specific standard must be set forth or attached so the exact standard may be readily identified. \_\_\_\_\_ %  
or  
\_\_\_\_\_  
Description of Standard  
(Additional space may be used)
  
4. In accordance with the Request for Proposal, describe in detail on a separate sheet all the steps to be taken by Carrier to mitigate the adverse visual impacts from erecting the Tenant Facilities.
  
5. Commencement Date: \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**AUTHORIZED CONTRACT PERSON:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE NO:** \_\_\_\_\_

**BIDDER'S AFFIDAVIT**

(This Affidavit is part of the Proposal)

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_  
Being duly sworn, deposes and says that he resides at:

\_\_\_\_\_  
That he is the:

\_\_\_\_\_  
(give title)

who signed the above proposal, that he was duly authorized to sign and that the proposal is a true offer of the Company, that the seal attached is the seal of the Company, and that all the declarations and statements contained in the Proposal are true to the best of his knowledge and belief.

SIGNATURE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_

**OWNERSHIP DISCLOSURE**

Pursuant to the provisions of Chapter 33 of the Public Laws of 1977, which took effect on March 8, 1977, all corporate and partnership bidders are required to submit a list of the names and addresses of all stockholders owning 10% or more of their stock, or 10% or more of the stock of their corporate stockholders, or, in the case of the partnership, the names and addresses of those owning a 10% or greater interest therein.

<u>NAME</u>	<u>ADDRESS</u>	<u>% OWNED</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE, TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_





**EXHIBIT B**

DESCRIPTION OF PREMISES

to the Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between the City of Vineland, a municipal corporation of the State of New Jersey, as Lessor, and \_\_\_\_\_, as Lessee.

The Premises are described and/or depicted as follows:

TO BE INSERTED:

- A minimum of:**
1. Site Map ( as proposed) with location and sizes of ancillary equipment.
  2. Antenna location on tower ( as proposed) with sizes.
  3. Any additional backup information that will assist the City in granting this lease.

INITIALS

\_\_\_\_\_  
\_\_\_\_\_

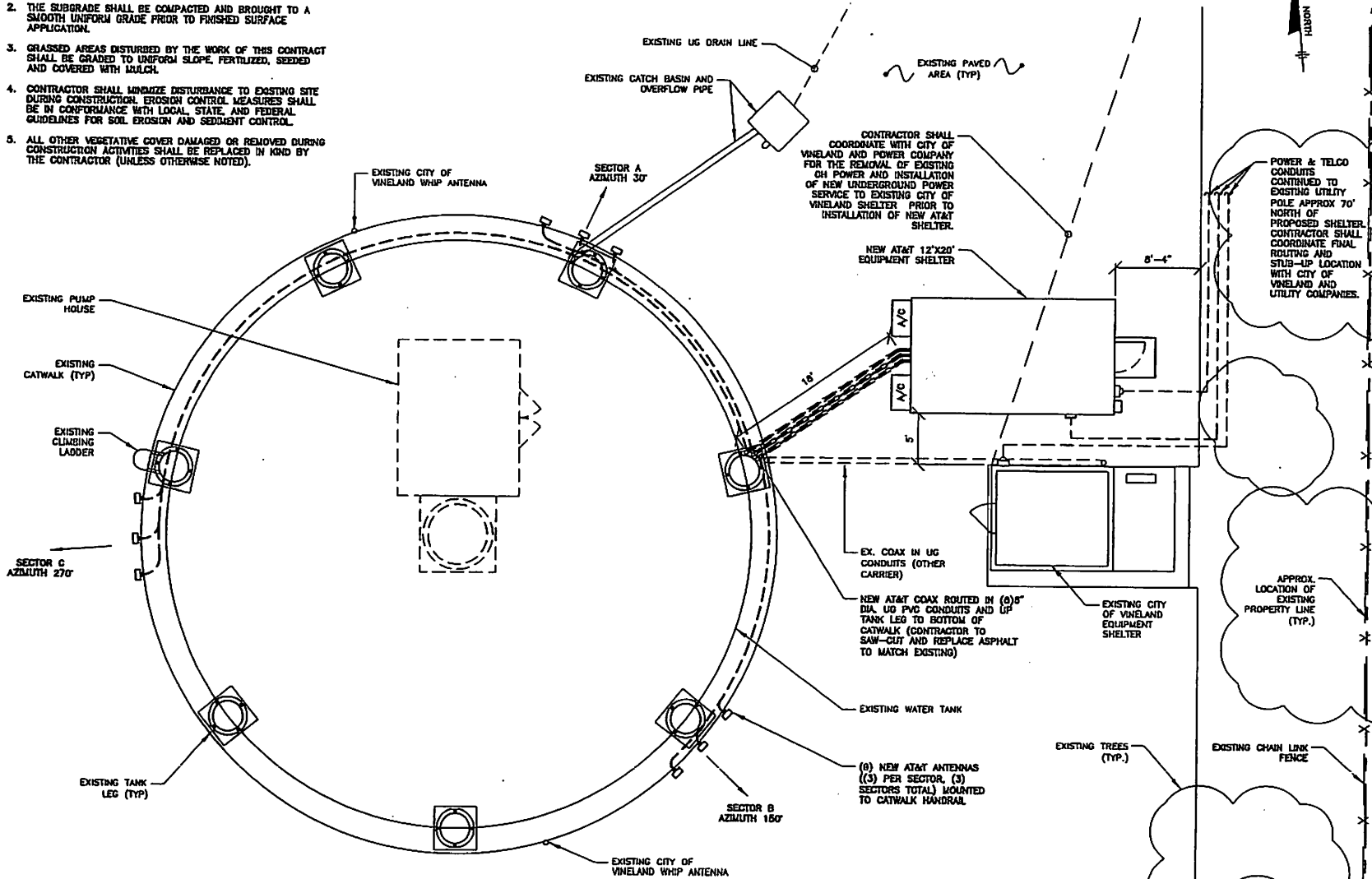
Notes:

1. This Exhibit may be replaced by a land survey of the Premises once it is received by Lessee.
2. Setback of the Premises from the Land's boundaries shall be the distance required by the applicable governmental authorities
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.

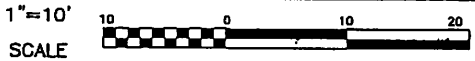
I:\Projects\10063522\_Vineland North\10063522\_Vineland North.dwg

**SITE PLAN GENERAL NOTES:**

1. THE SITE SHALL BE GRADED TO CAUSE SURFACE WATER TO FLOW AWAY FROM THE EQUIPMENT AND TANK AREA.
2. THE SUBGRADE SHALL BE COMPACTED AND BROUGHT TO A SMOOTH UNIFORM GRADE PRIOR TO FINISHED SURFACE APPLICATION.
3. GRASSED AREAS DISTURBED BY THE WORK OF THIS CONTRACT SHALL BE GRADED TO UNIFORM SLOPE, FERTILIZED, SEEDED AND COVERED WITH MULCH.
4. CONTRACTOR SHALL MINIMIZE DISTURBANCE TO EXISTING SITE DURING CONSTRUCTION. EROSION CONTROL MEASURES SHALL BE IN CONFORMANCE WITH LOCAL, STATE, AND FEDERAL GUIDELINES FOR SOIL EROSION AND SEDIMENT CONTROL.
5. ALL OTHER VEGETATIVE COVER DAMAGED OR REMOVED DURING CONSTRUCTION ACTIVITIES SHALL BE REPLACED IN KIND BY THE CONTRACTOR (UNLESS OTHERWISE NOTED).



**SITE PLAN**  
SCALE: 1"=10'



CONTRACTOR SHALL REFERENCE AT&T STANDARD DETAILS AND SPECIFICATIONS FOR WIRELESS TELECOMMUNICATION TOWERS.

PREPARED FOR:

200 North Warner Road  
King of Prussia, PA 19406

PREPARED BY:

complete wireless solutions

Velocitel, Inc.  
2000 Regency Pkwy, Suite 135  
Cary, NC 27518  
Office (919) 250-0082  
Fax (919) 250-0035

PROFESSIONAL ENGINEER

DAVID F. SOUTHMACK, P.E.  
NJ LICENSE # 24530  
2000 REGENCY PARKWAY, SUITE 135  
CARY, NC 27518  
(919) 250-0082-200

IF IT IS A VIOLATION OF LAW FOR ANY PERSON OTHER THAN THE AGENT NAMED IN SECTION 1 OF THIS LICENSE TO SIGN OR SEAL THIS DOCUMENT, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROPER OBSERVANCE OF THE CONTRACT SCOPE.

IN CHARGE OF D.F. SOUTHMACK

DESIGNED: JMB	CHECKED: JMB		
DRAWN: PR	FILE NO. 1031-030		
DATE: SEPTEMBER 2 2008			
NO.	DATE	REVISION	BY

AT&T  
WATER TANK

SITE NUMBER: 10063522  
VINELAND NORTH  
71 WEST FOREST GROVE RD  
VINELAND, NJ 08360

DETAIL  
SITE PLAN

C2.1

COMMUNICATIONS ANTENNA SITE  
LEASE AGREEMENT

CITY OF VINELAND

AND

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**LEASE AGREEMENT**

THIS **AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the City of Vineland (the “City”) and \_\_\_\_\_ (“the Carrier”).

WHEREAS, the Carrier is a wireless communications Company licensed by the Federal Communications Commission (“the FCC”) to operate in New Jersey; and

WHEREAS, the Carrier seeks to construct, install, operate and maintain radio transmitting and receiving antennas together with other associated electronic equipment in connection with its wireless communications business as needed to expand and to improve its telephone service; and

WHEREAS, the City has properties well suited for the antennas needed for wireless communications systems; and

WHEREAS, the City desires to improve services available to the traveling public, to enhance communications systems within the State, and to add to its revenues by making City properties available for wireless communications infrastructure consistent with other public uses of its property, and

WHEREAS, the Carrier proposes that the use of City properties can be an important option for the placement of antenna sites if the cost is competitive and the process of establishing Sites is expedited; and

WHEREAS wireless communications carriers are not public utilities regulated by the State of New Jersey, within the meaning of Titles 27 and 48 of the New Jersey Statutes and thus they are not entitled to utilize public rights of way on the terms specified in those statutes; and

WHEREAS the City has determined to make certain of its properties available to wireless communications companies, on a fair and equitable basis, for use as antenna sites pursuant to a study performed for the County of Cumberland in which the City of Vineland participated;

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, the City and the Carrier agree as follows:

1. **SITE**

The City hereby grants to the Carrier a lease to use the following property or facility, hereinafter referred to as the “Site”, for the installation and operation of antennas and related wireless communications equipment, including communications antennas, cable wiring, equipment, buildings, fencing and other accessories, in accordance with the terms of this agreement:

**SITE DESCRIPTION:**

A portion of the real estate in the name of the City of Vineland known as Block 804, Lot 4, on the Tax Map of the City of Vineland upon which is constructed a water tower facility. The lease shall concern a portion of that Lot and Block, the size of which and location is more accurately designated on a plot plan attached hereto and made a part hereof, marked **Exhibit “A”**.

Carrier shall have access to Site any day 24 hours a day. If the Carrier needs access to the Site, the Carrier shall notify the Water Utility any day, 24 hours a day to obtain access.

2. TERM

The term of this Agreement shall be five (5) years from the date of execution by both parties. The Carrier agrees to begin the process of gaining the approvals necessary to the initiation of Site construction within one (1) year of execution of this agreement by both parties. If, however, the Carrier does not, in good faith, actively pursue a building permit within said one (1) year period, the City may initiate proceedings to terminate this agreement in accordance with Section 4 below.

The Carrier shall have the option to renew this agreement for four (4) consecutive five (5) year periods on the same terms and conditions in effect during the initial term, with the exception of the amount of the fee for use of the Site. However, this agreement shall be automatically renewed unless, sixty (60) days before the expiration of each five (5) year term, the Carrier notifies the City of its intention to terminate.

3. PAYMENTS FOR USE

**A. BASE FEE**

The Carrier shall pay the City a base fee of \$\_\_\_\_\_ per annum for the use of the Site that is the subject of this agreement.

**B. FEE PAYMENT SCHEDULE**

The base fee for the first year of this agreement shall be paid to the City within ten (10) days of the date on which a building permit is issued for the Site. Thereafter, the Carrier shall make an annual payment every twelve (12) months on or before each anniversary date until the term of this agreement has expired. Payments shall be mailed to: Chief Finance Officer, City of Vineland, 640 E. Wood Street, P.O. Box 1508, Vineland, New Jersey 08362-1508.

**C. FEE ADJUSTMENTS**

The base annual rental payment shall be increased annually following the first installment by \_\_\_\_\_%.

#### 4. TERMINATION

##### **A. BY CARRIER FOR COMMERCIAL REASONS**

If, at any time during the term of this agreement, it becomes commercially inadvisable in the Carrier's business judgment for the Carrier to utilize the Site, the Carrier may terminate this agreement. In such event, the Carrier will provide the City with a minimum of 180 days written notice of its intent to terminate this agreement and will compensate the City in an amount equivalent to one-half (1/2) of one (1) annual payment as liquidated damages for the early termination, in addition to the annual payment for the year of termination.

Additionally notwithstanding the above, if at any time during the term of this agreement, the Site or the Carrier's facilities are damaged, destroyed or condemned and the Carrier is unable to use the Site for its intended purpose, the Carrier shall notify the City in writing, within forty-five (45) days of such damage, destruction or condemnation as to whether it has determined to terminate this agreement.

Upon the Carrier's termination of this agreement pursuant to the terms of this subsection 4.A, the City shall require the Carrier, on thirty (30) days notice, to remove the Carrier's communications antenna, hardware and building(s) and to return the Site to its original condition, reasonable wear and tear beyond the Carrier's control excepted, at the Carrier's sole cost and expense.

##### **B. BY CARRIER DUE TO CONFLICT WITH THE CITY**

If the City's use of Block 804, Lot 4, makes it necessary for the Carrier to remove or relocate its equipment and facilities to another location on the property or to another location near the Site, the Carrier may elect to terminate this agreement. If the Carrier elects to terminate this agreement, it shall remove its equipment and return the Site to its original condition, reasonable wear and tear beyond the Carrier's control excepted, at the Carrier's sole cost and expense.

##### **C. BY THE CITY FOR CONVENIENCE**

The City may terminate this agreement if its own use of Block 804, Lot 4, requires relocation of the Carrier's facilities. To the extent practicable, the City shall provide the Carrier with 365 days written notice of the termination of this agreement due to the City's required use of the Site. The City shall use its best efforts to find another suitable location for the Carrier's facilities in the event that the City's use of the property requires relocation by the Carrier. The Carrier's obligation to pay a fee for the use of the Site shall cease upon the date that the Carrier removes its equipment and restores the Site. A prorated portion of any advance payment made by the Carrier shall be returned to the Carrier by the City within ninety (90) days of the date on which the Carrier has completely removed its equipment and restored the Site.

#### **D. BY THE CITY FOR CAUSE**

The City may terminate this Agreement in its entirety for cause: (1) in the event of a material breach which is not cured in accordance with the provisions of this Agreement; (2) upon violation by the Carrier of applicable federal, state or local law which is not cured in accordance with the provisions of this agreement; (3) if the Carrier shall become insolvent or make an assignment for the benefit of creditors or file a voluntary petition in bankruptcy, or if an involuntary petition in bankruptcy is Filed against the Carrier and the act of bankruptcy alleged is not denied by the Carrier and the petition of bankruptcy is not discharged within sixty (60) days; or (4) in the event of the Carrier's interference with the City's operations. If the City exercises its rights under subsection (4) of this paragraph, the City shall use its best efforts to find another suitable location for the Carrier's facilities.

The City shall provide the Carrier with sixty (60) days written notice of its intent to terminate this Agreement for cause, unless public health, safety or welfare is threatened by the cause giving rise to the termination. Any delay by the City in providing notification of termination is not to be construed as a waiver of its right to demand such termination.

The following shall be deemed a default by the Carrier and a breach of this Agreement:

(a) Non-payment of the fee for use of the Site within thirty (30) days of written notice of such failure to pay; or (b) the Carrier's failure to perform any covenant under this Agreement within forty-five (45) days after written notice from the City specifying the failure. No such failure, however, shall be deemed to exist if the Carrier shall begin to cure the breach within such forty-five (45) day period and its efforts are prosecuted to completion with reasonable diligence. In case of a force majeure, the Carrier shall effect a cure as soon as practicable.

A force majeure is defined as events, contingencies or causes beyond the control and without the fault of the Carrier, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, (collectively referred to as "Force Majeure") or any event of Force Majeure which impacts the performance of the Carrier's suppliers or subcontractors with respect to this Agreement.

Except as otherwise provided herein, upon termination of this agreement, the City shall require the Carrier, on thirty (30) days notice, to remove the communications antenna, hardware and building(s) and to return the Site to its original condition, reasonable wear and tear excepted, at the Carrier's sole cost and expense. If the City advises the Carrier to remove its facilities and the Carrier refuses to do so, the City may remove the facilities and charge the cost and expense of removal to the Carrier or deduct the costs and expenses from monies due the Carrier under this Agreement. Except as otherwise provided herein, the fee for use of the Site terminated before the end of the term of this agreement shall be payable to the later of (1) the effective date of the early termination or (2) the date on which the Carrier has removed its equipment and restored the Site.

#### **E. TERMINATION NOTICES**

All notices of termination shall become effective on the tenth day following the date the notice is mailed, unless otherwise specified in the termination notice.

In the event of termination by either party, the Carrier will not be reimbursed expenses associated with design, construction or operation of proposed antenna and associated equipment.



## 5. USE OF SITE

The City covenants that the Carrier, upon paying the fee for use of the Site and performing its obligations under this agreement, shall peaceably and quietly have, hold and enjoy the Site as specifically described on **Exhibit "A"**. The City shall keep and maintain a fence surrounding Block 804, Lot 4, so as to preclude access upon said Block and Lot by the general public. The Carrier shall be provided access to the interior of the fenced in area so as to construct, install, operate and maintain equipment in connection with its wireless communication business. The City reserves the right to utilize the balance of Block 804, Lot 4, which is not subject to this Lease Agreement in a manner it deems appropriate, which may include, but not be limited to, providing the use of the balance of Block 804, Lot 4, and improvements thereon to other wireless or telecommunications providers. Neither the City nor any other party shall utilize Block 804, Lot 4, in a manner which will unreasonably interfere with the use by the Carrier. The Carrier will not utilize Block 804, Lot 4, in a manner which will unreasonably interfere with the use by the City or other tenants of Block 804, Lot 4.

The Carrier shall use the Site for the sole purpose of constructing, maintaining and operating a wireless communications facility, including antennas. The Carrier shall maintain the facilities and the Site in reasonable condition, reasonable wear and tear and damages from the elements excepted. All improvements to the Site constructed by the Carrier for its purposes shall be at the Carrier's sole risk and expense.

The City may permit any third party to install any equipment on any portion of Block 804, Lot 4, which is not described on **Exhibit "A"** without the prior written consent of the Carrier. Use by others shall be governed by Section 23 of this Agreement.

## 6. CONDITIONS OF SITE USE

The Carrier's right and obligation to use the Site is contingent upon it obtaining all certificates, permits, licenses and other approvals that may be required from the appropriate authorities under any applicable law, and upon the Site continuing to be commercially and otherwise suitable for the Carrier's needs and upon the Carrier's noninterference with City's use of Block 804, Lot 4. In the event Carrier, after using all of its best efforts, fails to obtain the necessary permits, licenses and other approvals, from no cause of its own, the Carrier may terminate this agreement pursuant to Section 4A herein.

The successful Carrier will be responsible for performing a Modulation Study prior to the installation of any antennas and related wireless communications equipment to determine any potential interference to the City's 800 mhz radio system. The successful Carrier will also perform a second study after the installation is complete to determine if there are any noticeable interference or differences.

## 7. NON-INTERFERENCE WITH CITY

Any construction, reconstruction, maintenance, repair and operation of the Carrier's equipment and improvements on the Site and all work in connection therewith shall be performed and arranged in a manner which will not unreasonably interfere with the City's use of its property, the free and safe flow of traffic, City's construction or maintenance work or with the City's radio or other communications, unless written approval is expressly granted by the City.

## 8. SITE ACCESS AND INSPECTION

The Carrier shall have access at all times to its facilities and equipment at the Site for ordinary operation and maintenance activities, subject to reasonable access and security procedures.

The City agrees to keep and maintain a locking gate to Block 804, Lot 4, for security purposes.

The City shall have access at all times during the Carrier's construction and installation work, and shall have the right to inspect the construction and installation work. Between the Carrier and the City, however, the Carrier shall be solely responsible for all work associated with the design, construction and installation of the Carrier's facilities. It is expressly understood by the parties that the City, whether or not it conducts Site visits or inspections, assumes no responsibility for the quality or adequacy or safety of the Carrier's design, construction and installation. The Carrier shall comply with all Federal, State and local construction laws relative to the construction and installation of their equipment. The Carrier shall correct all deficiencies pursuant to the applicable laws. Within thirty (30) days of completion of construction, the Carrier shall submit "as-built" drawings in a format that is acceptable to the City.

No changes other than those set forth on the Designs shall be permitted. The City shall be permitted to inspect all work to assure compliance with Designs and all costs incurred by the City to assure compliance, including engineering and construction inspections shall be borne by the Carrier.

## 9. OWNERSHIP

The equipment, ancillary structures or buildings constructed by the Carrier shall be the property of the Carrier from the date that construction begins. All equipment or property of the Carrier which is attached to or otherwise brought onto the Site by the Carrier shall remain the personal property of the Carrier and may be removed by it at any time without the City's consent. During the term of this agreement, the Carrier may replace any of its equipment at its sole cost and expense, consistent with the provisions of this Agreement.

## 10. USE OF TOWER.

The Carrier is not permitted to post signs or other advertisements on any tower which is subject to this Agreement, except that the Carrier may post warning, safety and emergency signs on its towers, fences and facilities. The City reserves the right to post its signs and advertisements on any tower which is subject to this Agreement, at any time. The City may post signs or advertisements of third parties on the towers subject to this Agreement, with the approval of the Carrier, which approval shall not be unreasonably withheld.

## 11. UTILITIES

The City represents that utilities adequate for Carrier's use of the Site are available. Carrier will pay for all utilities used by it at the Site. City will cooperate with Carrier in Carrier's efforts to obtain utilities from any location provided by City or the servicing utility, including signing easements or other instruments reasonably required by the utility company. Carrier shall have the right to have its utility usage separately metered, in which case Carrier will install at its expense any meters necessary to accomplish this. The parties agree that, in the event Carrier requires an easement, such easement will not be exclusive to Carrier, and its use may be permitted by others not a party herein at the sole discretion of the City.

## 12. APPROVAL OF PLANS FOR CONSTRUCTION

All Site plans and plans for the construction and the installation of equipment and related improvements by the Carrier shall be submitted to the City for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. No construction shall begin until the City approves plans for construction, and until construction plans are submitted to and approved by appropriate authorities. The City makes no representations as to the approvals needed. Prior to construction, Carrier shall perform a structural analysis of the water tower facility upon which their equipment shall be located to confirm structural integrity of the tower for the purposes which Carrier intends to use same. Carrier shall also perform a structural analysis of the installation upon the tower to confirm same is acceptable. The City shall be provided copies of both analyses prior to construction.

It is expressly understood by the parties that no approval by the City of construction or installation plans relieves the Carrier from its full responsibility for the construction and installation, nor shall any such approval restrict, modify or void the obligations assumed by the Carrier pursuant to Section 19 of this Agreement.

The City shall have the right to approve all contractors and subcontractors hired by the Carrier to perform work in connection with this Agreement, which approval will not be unreasonably withheld, delayed or conditioned. The City shall also have the right to require proof of adequate insurance coverage and proof that said contractors and subcontractors are licensed and not debarred or subject to debarment proceedings.

## 13. MAINTENANCE AND REPAIRS

### **A. CARRIER FACILITIES**

The Carrier shall be solely responsible to perform all maintenance and repairs necessary to keep its equipment, buildings, facilities and equipment in good condition, reasonable wear and tear excepted, and in compliance with applicable FCC and Federal Aviation Administration rules and regulations. The maintenance of the Site (Exhibit "A") shall be the responsibility of the Carrier.

The Carrier shall provide advance notice to the City of construction and repair work of a non-routine nature on the Carrier's facilities or equipment.

The City reserves the right, in its sole discretion, to make emergency repairs on the Carrier's facilities, at the sole cost and expense of the Carrier, when such repairs are needed immediately to protect the City or the public. The City shall provide telephonic notice to the Carrier of any emergency and, if feasible, shall give the Carrier an opportunity to respond to the emergency.

The City shall maintain snow removal of the access road to the Site throughout the length of the lease.

## **B. CITY FACILITIES**

Where the Carrier pays a fee for the use of space on a City-owned tower, the City agrees that it will keep the tower or ancillary equipment in good repair in accordance with any applicable laws. The City shall also comply with all rules and regulations enforced by the Federal Communications Commission and Federal Aviation Administration with regard to the lighting, marking and painting of towers. If the City fails to make any necessary repairs to its facilities, the Carrier, after giving written notice to the City, may make any repairs necessary to comply with any applicable laws, and the costs thereof shall be credited against fees payable or to be payable to the City under this Agreement.

Each antenna installed by the Carrier on a City tower must be identified by a metal tag fastened securely to its bracket on the tower, and each transmission line shall be tagged at the conduit opening where it enters the Carrier's equipment building or facility.

In the event that the City intends to paint the water tower during the term of this agreement, the City shall notify the Carrier in writing of its intent to do so thirty (30) days prior to commencement. Carrier shall reduce power output for three (3) business days so as to provide the City with time to complete the painting of the tower. In the event the City needs additional time to complete painting of the tower, the Carrier shall be permitted to utilize a portable temporary facility at the Site in accordance with Section 15 of this Agreement.

## 14. RESTORATION OF CITY PROPERTY

The Carrier, at its sole cost and expense, will restore all City property which is destroyed or disturbed by the Carrier's activities on the Site. The Carrier agrees to commence performance of any remedial work within thirty (30) days of written notice by the City and to complete remedial work required in the reasonable opinion of the City to restore the Site to its original condition, reasonable wear and tear and damage beyond the Carrier's control excepted, within the number of days specified in the written notice. The number of days specified shall be reasonable. If remedial work is not undertaken and completed within the specified time, the City may, on ten (10) City business days written notice to the Carrier, undertake and complete the remedial work with its own forces and/or independent contractors and the Carrier shall pay all actual costs or charges incurred by the City by reason of such work.

## 15. RELOCATION

If a Carrier relocates its equipment and facilities at the Site in response to a notice from the City terminating this agreement in accordance with Section 4C, the Carrier shall be permitted to utilize a portable temporary facility at the Site for up to sixty (60) days. If the Carrier relocates its equipment and facilities at the Site in response to a notice from the City that additional time is required for painting the tower in accordance with Section 13(B), the Carrier shall be permitted to utilize a portable temporary facility at the Site until the City notifies Carrier that it can again utilize the tower for its equipment and facilities at the Site. The location shall be mutually acceptable, and approval of said location shall not be unreasonably withheld, delayed or conditioned. The City agrees that, in making decisions regarding its use of the Site, it will make reasonable efforts to accommodate the Carrier's needs to maintain uninterrupted wireless telephone service. The Carrier agrees to bear all costs of relocation of its equipment and facilities, including all costs associated with said portable temporary facilities.

## 16. COMPLIANCE WITH ENVIRONMENTAL LAWS

The City represents that it has no knowledge of any substance, chemical or waste (collectively "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation except that which is licensed or authorized by the appropriate regulatory body. The Carrier shall not introduce or use any such substance on the Site without first notifying the City of its intent to do so and obtaining its approval, which approval shall not be unreasonably withheld. Further, Carrier shall not introduce or use any such substance on the Site unless first licensed or authorized by the appropriate regulatory body.

The Carrier shall inspect the Site where work is to be performed pursuant to this Agreement and become familiar with the conditions of the Site. The Carrier agrees that no claim whatsoever shall be made against the City for costs, damages or expenses as a result of the conditions of the Site.

The Carrier, at its own cost and expense, shall comply with any existing or hereafter enacted and applicable environmental laws or regulations which affect the Carrier's operation of the facilities installed on the Site covered by this Agreement. The Carrier shall be solely responsible for obtaining all required permits and approvals before commencing any construction work at the Site and for making all necessary submissions to appropriate agencies charged with enforcing applicable environmental laws or regulations which affect the Carrier's operation of facilities installed pursuant to this agreement. If the City deems it appropriate and consistent with the public interest, the City shall assist the Carrier in obtaining required permits and approvals and making submissions to regulatory agencies. The Carrier shall bear the cost and expense of all necessary applications and permits.

The Carrier may, at its own cost and expense, conduct site investigations as part of its initial site evaluation, including any tests and soil borings necessary to determine the presence or absence of environmentally sensitive materials at the Site, with the approval of the City. Such approval shall not be unreasonably withheld, conditioned or delayed. If a site investigation reveals the presence of contamination, the Carrier may elect to conduct any required cleanup or remediation at its expense, or it may decide not to develop the Site. If the Carrier does not proceed with the development of the Site, it shall not be responsible for any environmental liabilities resulting from site tests approved by the City.

If at any time, during construction or otherwise, contamination is revealed on the Site, the Carrier must notify the appropriate authorities and City of said discovery, in accordance with applicable environmental laws and regulations. If the Carrier does not proceed with the development of the Site, it shall not be responsible for any environmental liabilities resulting from site tests approved by the City. If the Carrier decides to proceed with development of the Site, it shall, at its own cost and expense, undertake any monitoring or remedial activities

required pursuant to any applicable laws or regulation. Except where such monitoring or remedial activities are voluntarily undertaken by the Carrier in order to advance its development of the Site, the Carrier shall not be responsible for the monitoring or remedial activities made necessary by pre-existing hazardous substances or wastes at the Site, including materials deposited by others, even if disturbed by the Carrier. The Carrier, at its own cost and expense shall promptly provide to the City copies of all submissions made to any environmental regulatory agency in connection with its responsibilities pursuant to this paragraph.

Only if site remediation must be undertaken as a result of Carrier-generated materials not pre-existing at the Site or as a result of the actions or inactions of the Carrier or its officers, agents, contractors or employees, the Carrier shall, at its own cost and expense, prepare and submit the required plans and financial assurances and carry out an approved remedial action plan to completion. The City shall have the right to approve any such remedial action plan prepared by the Carrier before it is submitted to the appropriate regulatory agency. The City's approval shall not be unreasonably withheld or delayed. The Carrier shall be solely responsible for complying with and completing any approved remedial action plan. The obligations of the Carrier set forth in this section of the Agreement shall survive the termination of this Agreement.

The Carrier shall, at all times during the term of this agreement, permit the City to have access to the Site for the purposes of environmental inspections, including, but not limited to, sampling. The City shall provide reasonable advance notice to the Carrier of environmental inspections and the Carrier shall have the right to have a representative present during any such inspections. The Carrier shall, at its own cost and expense, provide all information reasonably requested by the City for the preparation of any non-applicability affidavits, de minimis quantity exemption applications, or other environmental submissions, and shall promptly sign such affidavits and submissions when requested by the City.

17. REAL ESTATE TAXES

The City shall not assess real estate taxes to the Carrier for use of City property.

18. INSURANCE

Insurance Requirements: The successful Carrier shall purchase liability insurance at its own expense and maintain for the duration of this contract such insurance naming the City of Vineland as additional insured. Such insurance shall be issued by a company or companies licensed to do business in the State of New Jersey, and who are Best's Rated "A" or better and cover the following:

- A. Claims under worker compensation, disability benefits and other similar employee benefit acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than his employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- D. Claims for damages insured by usual bodily injury and property damage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or (2) by any other person;
- E. Claims for damages, other than a work itself because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

Workers compensation in compliance with the statutory requirements of the state of operation and employers liability with a limit of \$1,000,000 each accident/disease/policy limit.

Commercial general liability insurance in the amount of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate.

Automobile liability insurance covering all owned, non-owned and hired vehicles. in the amount of \$2,000,000 combined single limit.

The successful Carrier shall be responsible for payment of said deductibles

All insurance policies required under this paragraph shall include an endorsement requiring thirty (30) days prior written notice to the City before any change or cancellation becomes effective. All required insurance shall be maintained in full force and effect for the duration of this agreement.

The requirement in this paragraph that the Carrier provide insurance coverage is not intended to relieve the Carrier of its full responsibility for damages under common law and as set forth herein.

#### 19. INDEMNIFICATION

A. The Carrier hereby agrees to defend, indemnify and save harmless the City, its officers, agents, and employees, and each and every one of them, from and against all suits, costs (including reasonable attorney fees and costs and court costs), claims, expenses, liabilities, and judgments of every kind and description, actually and reasonably incurred, whether threatened, pending, or completed, including claims, suits, costs, expenses and judgments of officers, agents, employees and contractors of the Carrier, and from and against all damages and expenses to which the City may be subjected by reason of the construction, reconstruction, maintenance, repair, alteration or operations of the facilities for which this Agreement is made, including without limitations any claims, suits, costs, expenses and judgments by reason of any damage to or destruction of the environment whatsoever including, without limitation, land, air, water, wildlife and vegetation, including, without limitation, the disturbance of or placement of fill in wetlands, caused by, resulting from, arising out of or occurring in connection with the performance of the work described in this Agreement, or incidental or appertaining thereto, or in connection with the creation of wetlands by the Carrier. Notwithstanding the above, the obligations assumed by the Carrier herein shall not extend to or encompass suits, costs, claims, expenses, liabilities and judgments incurred as a result of actions or inactions of the City. The obligation of the Carrier under this paragraph shall survive the expiration of this Agreement.

B. The City hereby agrees to defend, indemnify and save harmless the Carrier, its officers, agents and employees from and against all suits, costs (including reasonable attorney fees and costs and court costs), claims, expenses, liabilities, and judgments actually and reasonably incurred, whether threatened, pending, or completed, including claims, suits, costs expenses and judgments of officers, agents, employees and contractors of the City, and from and against all damages and expenses to which the Carrier may be subjected by reason of the maintenance, repair, alteration or operations of the water tower upon which Carrier's facilities are located. This indemnification is limited to the extent of the liability, if any, and defenses provided to the City under the New Jersey Tort Claims Act.

20. ASSIGNMENT

The Carrier shall give the City written notice in advance of any proposed assignment, *except where advance notice would violate applicable federal law*. Carrier shall give notice to the City twenty-one (21) days following the assignment. Except as specifically provided in this paragraph, the Carrier shall not otherwise assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any provision hereof, the Carrier will have the right to assign without prior notice the Agreement to any affiliate, subsidiary, successor, legal entity or entity acquiring all of the assets of the Carrier, in the market were the Site is located as defined by the FCC.

21. NOTICES

All notices under this Agreement must be in writing and shall be deemed validly given if sent by reliable overnight carrier or regular certified mail, return receipt requested, effective on the earlier of (a) when received or (b) three days after mailing. Notices should be addressed as follows:

City: City of Vineland  
640 E. Wood Street  
P.O. Box 1508  
Vineland, New Jersey 08362-1508  
Attn: Robert E. Dickenson, Jr., Assistant Business Administrator  
Phone: 856-794-4144

Carrier:

Attention: Property Manager

Telephone:

Either party may change the designated recipient of notices by so notifying the other party in writing.



22. GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of New Jersey.

23. MISCELLANEOUS

- A. City represents and agrees (a) that it is the only owner of the site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that Carrier is entitled to unrestricted access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as Carrier is not in default beyond the expiration of any cure period; and (e) that City shall not have unsupervised access to Carrier's equipment.
- B. Carrier will resolve technical interference problems with other equipment located at the Site on the Commencement Date or any equipment that becomes attached to the Site at any future date when Carrier desires to add additional equipment to the Site. Likewise, City will not permit or suffer the installation of any future equipment which (a) results in technical interference problems with Carrier's then existing equipment, or (b) encroaches onto the Site.
- C. If requested by Carrier, the City shall promptly execute and deliver to the Carrier a recordable memorandum of this Agreement in the form as agreed upon by both parties.
- D. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by the law.
- E. The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees, costs, and expenses from the non-prevailing party.

This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations whether written or oral, between the parties, regarding the subject matter herein.

Nothing in this Agreement is intended to create any rights in any third parties.

IN WITNESS WHEREOF, the City and the Carrier have caused their duly authorized representatives to execute this Agreement.

CITY OF VINELAND

By: \_\_\_\_\_  
Ruben Bermudez, Mayor

ATTEST:

\_\_\_\_\_  
Keith Petrosky, City Clerk

\_\_\_\_\_  
(CARRIER)

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

Witness:

\_\_\_\_\_

THIS AGREEMENT HAS BEEN REVIEWED AND APPROVED AS TO FORM

\_\_\_\_\_  
City Solicitor