

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 12

Ordinance/Resolution# 12-017

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of July 18, 2011
(Adoption Date)

TITLE: A RESOLUTION APPROVING THE LEASE OF A FIFTEEN-FOOT BY THIRTY-FOOT PARCEL OF CITY-OWNED PROPERTY LOCATED AT 101 E. UNION AVENUE TO VERIZON WIRELESS, LLC, FOR \$3,600.00 A YEAR FOR THE PURPOSE OF LOCATING GROUND EQUIPMENT NEEDED TO OPERATE ON THE EXISTING T-MOBILE CELLULAR ANTENNA SITE.

PURPOSE(S) OF ACTION:

A resolution to approve the lease of property to Verizon Wireless, LLC.

COUNCIL DISTRICT: 2		
<u>Drafter/Staff Contact:</u> Michael Q. Hernandez <i>[Signature]</i>	<u>Department/Section:</u> Public Works/Land Management Section	<u>Phone:</u> 528-3124
<u>City Manager Signature:</u>	<i>[Signature]</i>	

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On October 22, 2010, Verizon Wireless, LLC, notified the City of Las Cruces that they were interested in executing a lease for a portion of City-owned property adjacent to the existing cellular site tower at Club Fusion, located at 101 E. Union Avenue. City staff inspected the site and found that there is space on the property next to the existing T-Mobile lease site. The area is large enough to accommodate an expanded lease site without interfering with property operations.

The proposed lease site will consist of a fifteen- (15) foot by thirty- (30) foot fenced yard. Verizon Wireless, LLC, made an agreement with T-Mobile for the use of their antenna. In this lease agreement, Verizon Wireless, LLC will lease a 450-square foot parcel from the City for \$300.00 per month (\$0.66 per square foot) in order to locate the ground equipment they need to operate on the existing antenna. City staff recommends the monthly payment for the land lease to be consistent with the rate of the current T-Mobile lease, which is at a current rate of \$0.66 per square foot.

The existing lease site is north of the Club Fusion building, between a ditch bank and the Interstate 10 right-of-way. This proposed lease will be on the west side of the existing fence. The property is zoned M-1 (Light Manufacturing, which allows the cell tower use). Fencing around the leased area will be hidden from the view of Union Avenue and Interstate 10.

This lease agreement calls for a five- (5) year initial term, with the option to renew for five (5) additional five- (5) year terms. Verizon Wireless, LLC will pay the City \$300.00 in rent each month during the initial term for an annual amount of \$3,600.00. The rent will increase by fifteen percent (15%) for each subsequent term. Proceeds from this lease agreement will be deposited in the General Fund Rentals. Verizon Wireless, LLC, will provide the City with a copy of liability insurance before any construction will be permitted.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Lease Agreement.
3. Exhibit "B", proposed lease area.
4. Exhibit "C", letter from T-Mobile West Corporation.
5. Exhibit "D", Memorandum of Land Lease Agreement from Verizon Wireless, LLC.
6. Attachment "A", Vicinity/Aerial map.

SOURCE OF FUNDING:

N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: (1000) in the amount of <u>\$3,600</u> for FY <u>11/12</u> .
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Lease income will be deposited into the General Fund balance and allocated for various expenditures during the budgeting process.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this action will approve the resolution and authorize the lease agreement between the City of Las Cruces and Verizon Wireless, LLC.
2. Vote "No", this action will not approve the resolution and will reject the lease agreement.
3. Vote to "Amend", this action could modify the terms of the resolution and instruct staff to seek alternative direction.
4. Vote to "Table", this action could postpone the resolution per Council's discretion and direction to staff.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 12-017

A RESOLUTION APPROVING THE LEASE OF A FIFTEEN-FOOT BY THIRTY-FOOT PARCEL OF CITY-OWNED PROPERTY LOCATED AT 101 E. UNION AVENUE TO VERIZON WIRELESS, LLC, FOR \$3,600.00 A YEAR FOR THE PURPOSE OF LOCATING GROUND EQUIPMENT NEEDED TO OPERATE ON THE EXISTING T-MOBILE CELLULAR ANTENNA SITE.

The City Council is informed that:

WHEREAS, on October 22, 2010, Verizon Wireless, LLC, notified the City of Las Cruces that they were interested in executing a lease of a portion of City-owned property adjacent to the existing cellular site tower at Club Fusion, located at 101 E. Union Avenue; and

WHEREAS, the proposed lease site will consist of a 15-foot by 30-foot fenced yard. Verizon, Wireless, LLC has made an agreement with T-Mobile for the use of their antenna. T-Mobile has leased this City land since March of 2000; and

WHEREAS, Verizon Wireless, LLC, will lease a 450-square-foot parcel from the City for \$300.00 per month (\$0.66 per square foot) in order to locate the ground equipment they need to operate on the existing antenna; and

WHEREAS, the lease agreement allows for a five- (5) year term, with the option to renew for five (5) additional five- (5) year terms. Verizon Wireless, LLC, will pay the City \$300.00 in rent each month during the initial term for an annual amount of \$3,600.00; and

WHEREAS, the rent will increase by fifteen percent (15%) for each subsequent term. Proceeds from this lease agreement will be deposited in the General Fund Rentals.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the land lease agreement attached hereto and a part of the Resolution between the City of Las Cruces and Verizon Wireless, LLC, as Exhibit "A", is hereby approved.

(II)

THAT the Mayor is hereby authorized to execute the lease agreement and any other documents necessary to finalize the lease on behalf of the City.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 2011.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

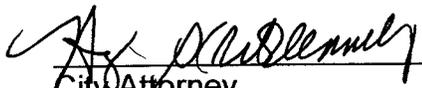
Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

LAND LEASE AGREEMENT

This Land Lease Agreement (the "Lease") is entered into on this _____ day of _____, 2011 between the City of Las Cruces (hereinafter, "City"), and Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless, hereinafter ("Verizon Wireless"). City and Verizon Wireless are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

RECITALS

Whereas, City is the owner of certain property in the City of Las Cruces, County of Dona Ana, State of New Mexico, being further identified as Parcel Number: 02-17725 (the "Property"); and,

Whereas, Verizon Wireless desires to lease a portion of the Property in order to construct, operate and maintain a communications facility and related appurtenances (collectively, the "Verizon Wireless Facilities").

Now therefore, the Parties hereby agree as follows:

1. **Premises.**

The City, hereby will lease to Verizon Wireless a four hundred and fifty (450) square foot parcel of the Property (the "Land Space"), together with the non exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty four (24) hours a day, on foot or motor vehicle, including trucks over or along the twenty-five (25) foot wide right of way extending from the nearest public right of way being Union Avenue to the Land Space, and for the installation and maintenance of the utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the "Premises") being substantially as depicted and described on Exhibit "A" attached hereto and made a part hereof. Verizon Wireless shall have the right at any time following the full execution of this Lease to enter upon the Premises, and upon the Property as reasonably necessary, for the purpose of making engineering and boundary surveys, inspections, soil test borings, other necessary tests and constructing the Verizon Wireless Facilities. Verizon Wireless shall hold title to the Verizon Wireless Facilities and all of the Verizon Wireless Facilities shall remain Verizon Wireless personal property and are not fixtures. Prior to commencing any construction of the Verizon Wireless Facilities and prior to any alterations, modifications or additions thereto, Verizon Wireless shall submit copies of its construction plan and specifications (collectively, "Plans") to the City for prior written approval, which approval shall not be unreasonably withheld or conditioned. The City shall give such written approval or provide Verizon Wireless with the City's requests for changes within five (5) business days of the City's receipt of the Plans. If the City does not provide its written approval or request for changes within such five (5) business day period, the City shall be deemed to have approved the Plans. The City shall not be entitled to receive any additional consideration in exchange for reviewing or giving its approval of the Plans. Notwithstanding anything to the contrary herein, Verizon Wireless may make repairs, perform maintenance, and make like-for-like replacements of any of the Verizon Wireless Facilities without any prior approval or consent of the City.

2. Lease Term.

This Lease shall commence based upon the date Verizon Wireless commences installation of the Verizon Wireless Facilities on the Premises, or on the first day of September 2011, whichever occurs first. In the event the date of commencing installation of the Verizon Wireless Facilities is determinative and such date falls between the 1st and 15th of the month, this Lease shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then this Lease shall commence on the 1st day of the following month (either of the foregoing or September 1, 2011, if applicable, being the "Commencement Date"). The City and Verizon Wireless agree that they shall acknowledge in writing the Commencement Date in the event the Commencement Date is based upon the date Verizon Wireless commences installation of the Verizon Wireless Facilities on the Premises. In the event the Commencement Date is the fixed date set forth above, there shall be no written acknowledgement required. The City and Verizon Wireless acknowledge and agree that initial rental payment(s) shall not actually be sent by Verizon Wireless until thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. The initial term of this Lease is for five (5) years commencing on the Commencement Date ("Term"), unless otherwise terminated as provided herein. Verizon Wireless shall have the right to extend the Term for five (5) successive five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive Renewal Term unless Verizon Wireless notifies the City of Verizon Wireless intention not to renew prior to commencement of the succeeding Renewal Term.

3. Rent.

(a) Thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required (with respect to the initial Rent payments), and on the first day of each month thereafter without notice or demand, Verizon Wireless shall pay to the City as rent Three Hundred and 00/100 Dollars (\$300.00) per month ("Rent"). Rent shall be payable to the City of Las Cruces at the following address or such other address as the City may designate in writing at least thirty (30) days in advance of any rental payment date. City of Las Cruces, Land Management, P.O. Box 20000, Las Cruces, NM 88004. Verizon Wireless monetary obligations set forth in this Lease are conditioned upon receipt of an accurate and executed W-9 Form from the City.

(b) Rent shall be increased at the beginning of any applicable Renewal Term by an amount equal to fifteen percent (15%) of the Rent in effect for the immediately preceding five (5) year period.

4. Costs, Fees and Taxes.

City shall pay all real estate taxes and other lawful assessments levied against the Property during the term of this Lease. Verizon Wireless shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which the City demonstrates is the result of Verizon Wireless use of the Premises and/or the installation, maintenance, and operation of the Verizon Wireless Facilities, and any sales tax imposed on the Rent (except to the extent that Verizon Wireless is or may become exempt

from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which the City demonstrates arises from the Verizon Wireless Facilities and/or Verizon Wireless use of the Premises.

5. Assignment.

Verizon Wireless shall not assign this Lease, or otherwise transfer all or any part of its interest in this Lease or in the Premises without the prior written consent of the City; which consent shall not be unreasonably withheld, conditioned or delayed: provided, however, that Verizon Wireless may assign this Lease, or otherwise transfer all or any part of its interest in this Lease or in the Premises without the prior consent of the City to Verizon Wireless' parent company, any subsidiary or affiliate of Verizon Wireless' or of its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of Verizon Wireless stock or assets. This Lease shall run with the Property and shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives, heirs and assigns. Notwithstanding anything to the contrary contained in this Lease, Verizon Wireless may assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Verizon Wireless (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. No assignment, with or without the City's consent, shall release Verizon Wireless of any of its obligations or liabilities hereunder.

6. Termination.

(a) By City.

(i) City may elect to terminate this Lease with cause at any time during the Term hereof pursuant to subparagraph (ii) below. Upon termination of the Lease, the City may require Verizon Wireless to restore the Premises to an unimproved, level condition at Verizon Wireless own cost and without claim against the City. Rent shall not accrue beyond the expiration or termination of this Lease.

(ii) If Verizon Wireless is in breach under this Lease and fails to cure such breach within thirty (30) days after receipt of written notice thereof from the City; provided, if the breach cannot reasonably be cured within such thirty (30) day period, the City may not terminate this Lease pursuant to this subsection if Verizon Wireless commences action to cure the breach within such thirty (30) day period and proceeds with due diligence to fully cure the breach.

(b) By Verizon Wireless.

(i) If the City is in breach under this Lease and fails to cure such breach within thirty (30) days after receipt of written notice thereof from Verizon Wireless; provided, if the breach cannot reasonably be cured within such thirty (30) day period, Verizon Wireless may not terminate this Lease pursuant to this subsection if the City

commences action to cure the breach within such thirty (30) day period and proceeds with due diligence to fully cure the breach.

(ii) If Verizon Wireless does not obtain or maintain any license, permit or other approval necessary for the construction and operation of the Verizon Wireless Facilities after use of all good faith efforts

(iii) If, through no fault of its own, Verizon Wireless is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies.

(iv) If any environmental report for the Property reveals the presence of any hazardous material after the Commencement Date which was not put on the Property by Verizon Wireless.

(v) If Verizon Wireless determines that the Premises are not appropriate for its operations for technological reasons, including, without limitation, signal interference or Verizon Wireless determines that the Premises is obsolete or unnecessary.

7. Insurance.

Verizon Wireless will purchase and maintain in effect a One Million and 00/100 Dollars (\$1,000,000.00) per occurrence general liability insurance policy with the City named as an additional insured. Verizon Wireless will deliver a certificate of said policy to the City within thirty (30) days of the full execution of this Lease and each policy renewal.

8. Indemnification.

Except to the extent caused by the negligence or willful misconduct of the City, Verizon Wireless shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims including costs and expenses of defending such claim and all other liabilities and expenses of any kind from any source which may arise out of this Lease or any amendment thereto, or from Verizon Wireless' use of the Property, to the extent caused by the tortious act or omission of Verizon Wireless, its agents or employees. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, lost technology, rights or service, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

9. Notice.

For purposes of notice under this Lease, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows to the City through the Land Manager, P.O. Box 20000, Las Cruces, New Mexico 88004. Notices shall be delivered to Verizon

Wireless at Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless, 180 Washington Valley Road, Bedminster, New Jersey 07921, (Site: LSC Knox).

10. Access.

Verizon Wireless employees, agents and contractors shall have access to the Premises without notice to the City twenty-four (24) hours a day, seven (7) days a week, at no charge. The City grants to Verizon Wireless, and Verizon Wireless agents, employees and contractors, a non-exclusive access right for pedestrian and vehicular ingress and egress across the Property to and from the Premises.

11. Interference.

(a) Verizon Wireless shall operate the Verizon Wireless Facilities in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of the City or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Verizon Wireless Facilities. In the event the Verizon Wireless Facilities causes such interference, and after the City has notified Verizon Wireless in writing of such interference Verizon Wireless will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Verizon Wireless' option, powering down such equipment and later powering up such equipment for intermittent testing. Verizon Wireless failure to comply with this paragraph shall be a material breach of this Lease.

(b) Subsequent to the installation of the Verizon Wireless Facilities, the City will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Property if such modifications are likely to cause interference with Verizon Wireless operations. In the event interference occurs, the City agrees to use best efforts to eliminate such interference in a reasonable time period. The City's failure to comply with this paragraph shall be a material breach of this Lease.

(c) The parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section and thereafter, either Party shall have the right to equitable remedies, such as, without limitations, injunctive relief and specific performance.

12. Removal at End of Term.

Verizon Wireless shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of this Lease, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. City agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Lessee shall remain the personal property of Verizon Wireless and Verizon Wireless shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws.

13. **Quiet Enjoyment.**

The City covenants that Verizon Wireless, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

14. **Title.**

City represents and warrants to Verizon Wireless as of the execution date of this Lease, and covenants during the term that City is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Lease.

15. **Governing Law.**

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

16. **Environmental.**

Neither City nor, to City's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined below) on, under, about or within the Property in violation of any law or regulation. City and Verizon Wireless each agree that they will not use, generate, store or dispose of any Hazardous Material on, under, about or within City's Property in violation of any applicable law or regulation.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date of the last signature below.

CITY OF LAS CRUCES

By: _____

Mayor, Ken Miyagishima

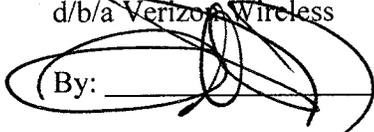
Date: _____

APPROVED AS TO FORM:

BY: _____

Senior Assistant City Attorney

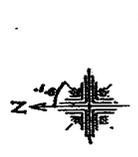
Verizon Wireless (VAW) LLC,
d/b/a Verizon Wireless

By:  _____

Print Name: Walter L. Jones Jr.

Title: Area Vice President Network

Date: 6/21/11



KEYED NOTES

- (A) FOUND 1/2" REBAR W/FLANGE CAP
- (B) FOUND T-HAIL N/W MARKED SURFACE (SEE SHEET L008042)
- (C) FOUND 1/2" REBAR W/FLANGE CAP
- (D) FOUND 1/2" REBAR W/FLANGE CAP
- (E) FOUND 1/2" REBAR W/FLANGE CAP
- (F) FOUND 1/2" REBAR W/FLANGE CAP
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- (H) FOUND 1/2" REBAR W/FLANGE CAP
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- (V) FOUND 1/2" REBAR W/FLANGE CAP
- (W) FOUND 1/2" REBAR W/FLANGE CAP
- (X) FOUND 1/2" REBAR W/FLANGE CAP
- (Y) FOUND 1/2" REBAR W/FLANGE CAP
- (Z) FOUND 1/2" REBAR W/FLANGE CAP

- (1) LESSEE 5' WIDE UTILITY EASEMENT
- (2) LESSEE 3' WIDE UTILITY EASEMENT

LEGEND

- ▲ TRAIL - SET 3/4" REBAR W/ST ALUMINUM CAP (Refer to Book of Bearings at Detail Note)
- TEMPORARY SIGN MARK SET WAS TAIL W/WASHER STAMPED 12 2001 01 30 ELEV. 3461.34 (MAYBE)
- FOUND SURVEY MONUMENT (AS NOTED)
- ✕ CALCULATED CORNER (POINT NOT SET)
- SET REBAR WITH CAP OR (AS NOTED)
- SHOWN FOR REFERENCE, NOT DEFINED BY THIS SURVEY

verizonwireless

4821 Edmont NE Albuquerque, New Mexico 87111



PARENT PARCEL SURVEY CONTROL OVERVIEW LEGAL DESCRIPTIONS

V2N LSC KN0X SU2

A parcel of land for the purpose of a telecommunications equipment lease area, abutting within the corporate limits of the City of Las Cruces, County of Dona Ana, State of New Mexico, within the U.S. Survey Tract 110-84, comprising a portion of the land interest of land described in the County Clerk's office of the County Clerk of Dona Ana County, New Mexico, on November 2, 1994, recorded in Book 388, Pages 735-737, said parcel of land being more particularly described by metes and bounds as follows:

Commencing at a New Mexico State Highway and Transportation Department "T-hail" right-of-way marker, located at the Southwest right-of-way line of Interstate North-32°16'39.40" W, a distance of 108.98 feet to the intersection of the following New Mexico State Plane coordinates:

(Starb Plains, WAD03, New Mexico Central Zone):
 Northings--485,105.033, Eastings--1,481,957.032, from which point NGS Control Monument "REILLY 1992" bears
 N 81°10'15" E, a distance of 3463.27 feet, thence,
 S 84°51'38" E, a distance of 136.86 feet to the Point of Beginning of the parcel of land herein described:

Thence, N 84°17'50" E, a distance of 15.00 feet;
 Thence, S 05°42'10" E, a distance of 30.00 feet;
 Thence, S 84°17'50" W, a distance of 15.00 feet;
 Thence, N 05°42'10" W, a distance of 30.00 feet to the Point of Beginning, containing 450 Square Feet.

LEASE AREA LAND DESCRIPTION

A strip of land for the purpose of a utility easement to serve a telecommunications equipment lease area, abutting within the corporate limits of the City of Las Cruces, County of Dona Ana, State of New Mexico, within the U.S. Survey Tract 110-84, comprising a portion of the land interest of land described in the County Clerk's office of the County Clerk of Dona Ana County, New Mexico, on November 2, 1994, recorded in Book 388, Pages 735-737, said strip of land being five (5.00) feet in width and lying two-and-one-half (2.50) feet on each side of the following described centerline:

Commencing at the Southwest corner of the above described telecommunications equipment lease area, thence, along the Western line of said lease area, N 05°42'10" W, a distance of 8.42 feet to the Point of Beginning of this utility easement centerline;

Thence, S 84°17'50" W, a distance of 7.00 feet to the termination point of this utility easement centerline.

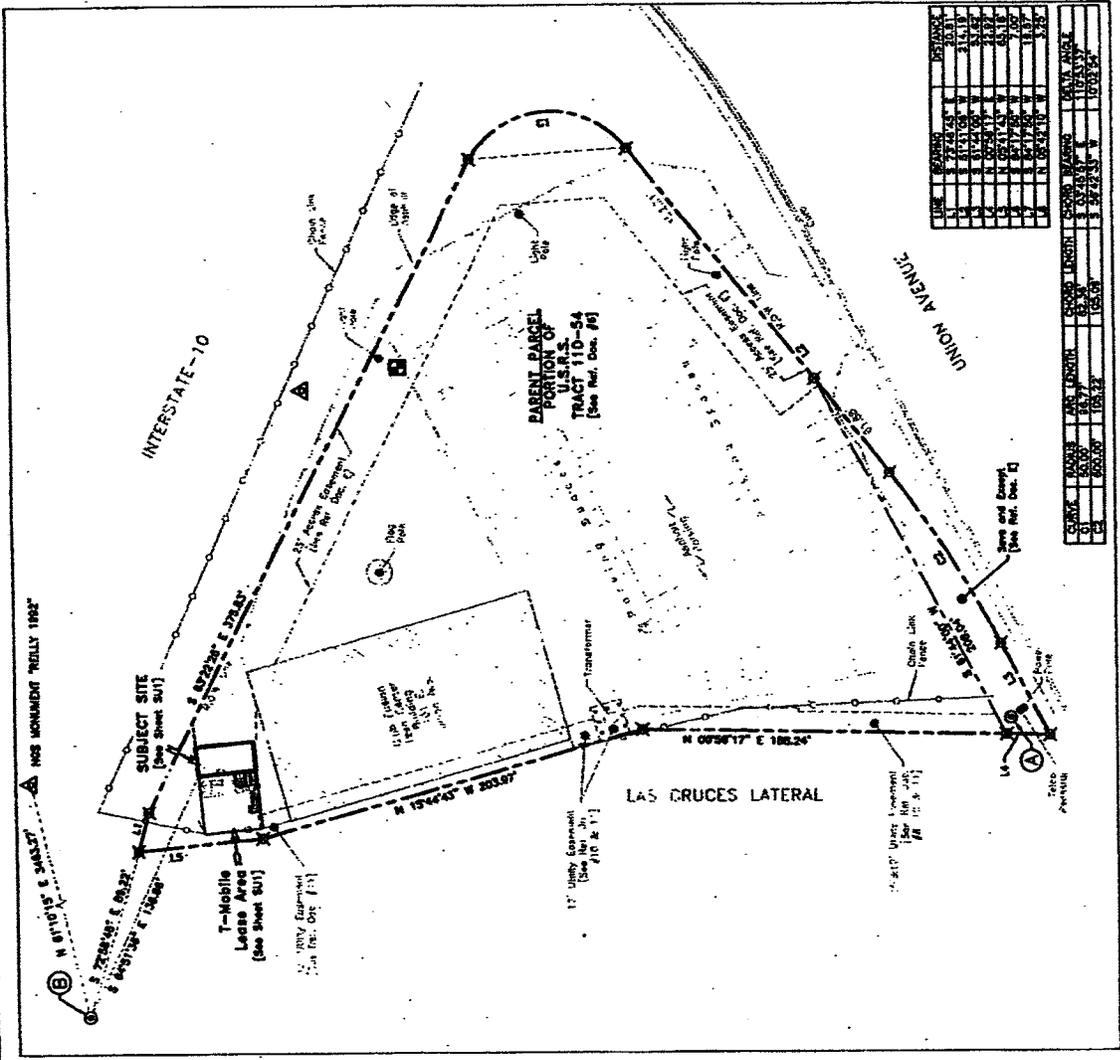
5 FT. WIDE UTILITY EASEMENT-CENTERLINE DESCRIPTION

A strip of land for the purpose of a utility easement to serve a telecommunications equipment lease area, abutting within the corporate limits of the City of Las Cruces, County of Dona Ana, State of New Mexico, within the U.S. Survey Tract 110-84, comprising a portion of the land interest of land described in the County Clerk's office of the County Clerk of Dona Ana County, New Mexico, on November 2, 1994, recorded in Book 388, Pages 735-737, said strip of land being three (3.00) feet in width and lying one-and-one-half (1.50) feet on each side of the following described centerline:

Commencing at the Southwest corner of the above described telecommunications equipment lease area, thence, along the Western line of said lease area, N 05°42'10" W, a distance of 2.00 feet to the Point of Beginning of this utility easement centerline;

Thence, S 84°17'50" W, a distance of 19.87 feet;
 Thence, N 05°42'10" W, a distance of 3.25 feet to the termination point of this utility easement centerline.

3 FT. WIDE UTILITY EASEMENT-CENTERLINE DESCRIPTION



PARENT PARCEL SURVEY CONTROL OVERVIEW
 SCALE: 1" = 80'

National Development Team – Site Marketing Department
3 MacArthur Place Suite 1000, Santa Ana CA 92707

December 7, 2010

City of Las Cruces
ATTN: Land Manager
PO BOX 20000
Las Cruces, NM 88004

**RE: T-Mobile West Corporation Site: NM02124B / Club Fusion
Verizon Wireless Site: CLSC Knox
Site Address: 101 E. Union, Las Cruces, NM 88005**

Dear Land Manager:

T-Mobile West Corporation consents to the proposed Verizon Wireless antenna installation per the construction drawings dated December 3, 2010 together with any supporting documentation subject to the conditions noted below:

1. This consent shall not constitute a waiver of any rights TMO has under any other existing agreements with any third party in the event that Verizon Wireless facilities interfere with TMO's pre-existing facilities.
2. Verizon Wireless is responsible for assuring compliance of its facilities with all governmental rules and regulations including, but not limited to, all applicable rules and regulations of the FCC and/or FAA.
3. Any changes made to the approved set of drawings referenced above must be re-submitted to TMO prior to construction.
4. Verizon Wireless shall protect-in-place and shall avoid direct contact and any interference with TMO's equipment, coax cables, antennas, etc., during construction and operation.

If you have any questions, please contact me at (714) 850-2434.

Sincerely,

APPROVED

By *Catrina Kangris* at 2:28 pm, Dec 07, 2010

Catrina Kangris
Tower Asset Management –West Region
T-Mobile West Corporation.

cc: Verizon Wireless

3. The Commencement Date of the Agreement, of which this is a Memorandum, shall be based upon the date LESSEE commences installation of its equipment on the Premises, or on the first day of September 2011, whichever occurs first. In the event the date of commencing installation of the equipment is determinative and such date falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month (either of the foregoing or September 1, 2011, if applicable, being the "Commencement Date").
4. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

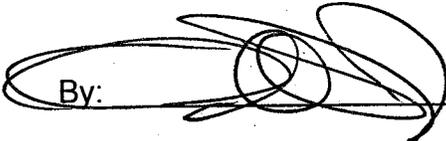
IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum to be duly executed on the date first written hereinabove.

LESSOR:
CITY OF LAS CRUCES

LESSEE:
Verizon Wireless (VAW) LLC,
d/b/a Verizon Wireless

By: _____
Mayor, Ken Miyagishima

Date: _____

By:  _____

Name: Walter L. Jones, Jr.

Title: Area Vice President Network

Date: 6/26/11

APPROVED AS TO FORM:

BY: _____
Senior Assistant City Attorney

LESSOR ACKNOWLEDGMENT

State of _____)

County of _____)

On _____ before me, _____, Notary Public,
(here insert name of Notary)

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 of Notary Public

(Seal)

State of California)
)
County of Orange)

**LESSEE
ACKNOWLEDGMENT**

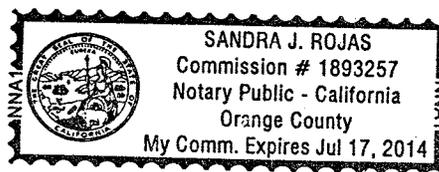
On 6/21/11 before me, Sandra J. Rojas, Notary Public,
personally appeared Walter L. Jones, Jr.

who proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he executed the same in his
authorized capacity, and that by his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sandra J. Rojas
Signature of Notary Public



Place Notary Seal Above

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Attached)

Exhibit "A"

A TRACT OF LAND SITUATE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO IN SECTION 29, T. 23 S., R. 2 E., N.M.P.M. OF THE U.S.R.S. SURVEYS AS A PORTION OF U.S.R.S. TRACT 11D-54 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE SOUTHWEST CORNER OF THIS TRACT, A POINT ON THE NORTH LINE OF UNION AVENUE AND ON THE EASTERLY RIGHT-OF-WAY OF THE LAS CRUCES LATERAL, WHENCE THE SOUTHWEST CORNER OF SECTION 29, T. 23 S., R. 2 E., N.M.P.M. OF THE U.S.R.S. SURVEYS BEARS S. 47 DEG. 03'06" W., A DISTANCE OF 2189.41 FEET;

THENCE FROM THE PLACE OF BEGINNING AND FOLLOWING ALONG THE EASTERLY RIGHT-OF-WAY OF THE LAS CRUCES LATERAL N.0 DEG. 58' 17" L 211.16 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG THE RIGHT-OF-WAY N. 15 DEG. 44'43" W., 203.97 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG THE LATERAL N. 5 DEG. 41'43" W., 65.18 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 10 (N.M.P. NO. 1-010-2(28)136) FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE ALONG SAID RIGHT OF WAY LINE S. 73 DEG. 46'45"E., 20.81 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG THE INTERSTATE RIGHT-OF-WAY S. 63 DEG. 22'26" E., 375.83 FEET TO A HIGHWAY RIGHT-OF-WAY RAIL MARKED STATION 314+97.38 FOR A POINT OF CURVATURE;

THENCE AROUND THE ARC OF A CURVE TO THE RIGHT WHOSE TANGENT BEARING IS S. 59 DEG. 13'00" E., HAVING A RADIUS OF 50.00 FEET, AN ARC LENGTH OF 96.78 FEET, THROUGHOUT A CENTRAL ANGLE OF 110 DEG. 54'06" AND WHOSE LONG CHORD BEARS S. 3 DEG. 45'57" E., 82.36 FEET TO A RIGHT-OF-WAY RAIL MARKED STATION 315+45.26 AT A POINT OF TANGENCY;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF UNION AVENUE S 51 DEG. 41'06" W., 214.19 FEET TO A HIGHWAY RIGHT-OF-WAY RAIL MARKED STATION 11+04.72;

THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 600.00 FEET, AN ARC LENGTH OF 105.25 FEET, THROUGH A CENTRAL ANGLE OF 10 DEG. 02'54" AND WHOSE LONG CHORD BEARS S. 56 DEG. 42'33" W., 105.09 FEET TO A POINT OF TANGENCY MARKED WITH A HIGHWAY RIGHT-OF-WAY RAIL STATION 10+00;

THENCE CONTINUING ALONG THE NORTH LINE OF UNION AVENUE S. 61 DEG. 44'00" W., 53.62 FEET TO THE PLACE OF BEGINNING, CONTAINING 2.0736 ACRES OF LAND, MORE OR LESS.

THIS CONVEYANCE IS SUBJECT TO the covenants, conditions and restrictions, easements and rights of way of record as may lawfully apply to the property conveyed herein,

AND FURTHER SUBJECT TO the terms of the Memorandum of Understanding dated August 23, 1994, between the United States Attorney's Office for the District of New Mexico, the Drug Enforcement Administration, the Las Cruces Police Department, and the City of Las Cruces, attached to and filed and recorded herewith in the records of the County Clerk of the County of Dona Ana.

AND FURTHER SUBJECT TO the Grantee, the City of Las Cruces, commencing use of this property within one year of the date of this conveyance for the purposes specified in the aforesaid memorandum of understanding. In the event that the Grantee does not commence use of the property within one year for the purposes specified in the aforesaid memorandum of understanding, title shall revert to the United States 30 days after the one-year period has elapsed.

AND FURTHER SUBJECT TO the Grantee continuously using this property for the purposes specified in the memorandum of understanding for a period of five years. In the event that the Grantee fails to do so, title shall revert to the United States. After five years of use as specified in the memorandum of understanding, the reversionary interest of the United States, set forth herein, shall lapse and be of no further force or effect.

