



AGENDA REPORT

Meeting Date: October 5, 2010
Item Number: E-7
To: Honorable City Council
From: Brenda Lavender, Real Estate & Property Manager
Subject: TEMPORARY SITE LICENSE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND NEW CINGULAR WIRELESS PCS, LLC.
Attachments: 1. Temporary Site Lease

RECOMMENDATION

It is recommended that the City Council approve the Temporary Site License by and between the City of Beverly Hills and New Cingular Wireless PCS, LLC. A copy of the lease is on file with the City Clerk. New Cingular's temporary site is located at 905 Loma Vista Drive – Greystone Mansion.

INTRODUCTION

This is a temporary site license for New Cingular dba AT&T to install 450 feet of fiber optic cable and connect it to the existing fiber optic cable installed by the City of Beverly Hills. This temporary license is as a part of the AT&T temporary antenna site. The term of the license is 90 days which may be extended based on mutual agreement. AT&T will pay \$1,600 monthly for the use of the City's fiber optic cable.

DISCUSSION

On July 22, 2010, City Council approved the temporary installation of three (3) antenna sites. Greystone Mansion is one of the three sites. The IT Department maintains fiber optic cable at Greystone and was therefore able to provide access for AT&T for this requirement.

FISCAL IMPACT

The Fiscal impact of this license is additional revenue of \$4,800 for the 90-day term. There is no out of pocket expense for the City.

Scott G. Miller, Director of
Administrative Services, CFO

Approved By

Attachment 1

TEMPORARY SITE LICENSE

LICENSOR: City of Beverly Hills

LICENSEE: New Cingular Wireless PCS, LLC and its affiliates

TERM: September 17, 2010 through December 17, 2010,
as may be extended pursuant to this License.

COMMENCEMENT DATE: September 17, 2010

LICENSED SITE: 905 Loma Vista Drive
Beverly Hills, CA 90210
APN: 4350-005-903

1. **License of Site; Access.** During the Term of this Temporary Site License (the “**License**”), Licensor hereby licenses a certain portion of Licensor’s property (the “**Property**”) at the Licensed Site that is described on Exhibit “A” (the “**Licensed Area**”) to Licensee and grants to Licensee the right to install 450 feet of fiber optic cable as described on Exhibit “A” and connect it to the existing fiber optic cable installed by Licensor as shown on Exhibit “A” for the purpose of Licensee using four fiber optic strands, and operate and maintain at Licensee’s expense and risk all such fiber optic cable installed by Licensee and the Equipment (as hereinafter defined), and install, operate and maintain temporary communications transmitting and receiving equipment, including (without limitation) antennas, poles, masts, transmission line(s), vehicles and accessories (collectively, the “**Equipment**”) provided they are expressly described in detail on Exhibit “A” at the location(s) described on Exhibit “A”.

Licensor will provide 4 strands of fiber optic cable originating in the basement of the gate house and terminating near the AT&T node located in Licensor's data center at 9355 Civic Center Drive, Level B, Beverly Hills, CA 90210. Licensee will terminate its 450 feet of fiber in the basement of the gate house and will jumper to Licensor's four strands of fiber located in Licensor's locked telecommunications cabinet. Licensee will jumper from the Licensor's fiber optic cable located in the data center to AT&T's network. Access to Licensor's data center and telecommunications cabinets may be arranged by calling 310.288.2888.

For access to the License Area, Licensee shall supply its own gate locking apparatus (which shall operate concurrently with, while being functionally independent of, Licensor’s locking devices) at the most western access gate located on Doheny Road. Licensee shall give Licensor a key or the combination, as applicable, for independent locking device. Licensee shall report, in person, to Licensor representatives located at 501 Doheny Road (northwest corner Doheny Road and Loma Vista Drive) before accessing the Licensed Site each day, which access shall be during normal business hours which are from 8 am to 5 pm Monday through Friday, except as hereafter provided. If Licensee needs access outside of normal business hours, Licensee shall contact Beverly Hills Police Dispatch at (310) 550-4951 and report its after-hours access to the Licensed Site prior to entering the Licensed Site after hours.

At its discretion, Licensee may take at its expense measures and precautions necessary to protect the Equipment provided that any such measures and precautions that involve access to the Property or making improvements are approved in advance by Licensor.

2. **Monthly Charge.** Licensee shall pay to Licensor, without notice, deduction or default, the sum of One Thousand Six Hundred and No/100 Dollars (\$1,600.00) per month during the term and any extension of the term, on or before September 17, 2010 and on or before the 17th day of each subsequent calendar month during the term and any extension of the term. Sums not paid when due shall bear interest from and after the date due at the lesser of ten percent (10%) per annum or the maximum rate permitted by law. All payments shall be delivered to Licensor at 455 N. Rexford Drive, Cashiers Office, Beverly Hills, California 90210, Attention: Information Technology.

3. **Termination; Extension of Term.** Licensor may terminate this License upon written notice to Licensee if Licensor defaults under this License and does not cure the default within ten (10) days after written notice from City. Provided Licensee is not in default, at the sole discretion of Licensee, Licensee may extend the term on a month to month basis upon the same terms and conditions by providing Licensor with written notice prior to the end of the Term. If Licensee remains in possession of the Licensed Site after the expiration of this License, then Licensee will be deemed to be occupying the Licensed Premises on a month-to-month basis terminable upon 30 days prior written notice by either party, and otherwise on the same terms of this License.

4. **Removal of Equipment and Site Condition.** Licensee takes the Licensed Site in its current "AS IS" condition, without representation or warranty, express or implied, and Licensor shall have no responsibility for its condition or any damage suffered by Licensee or any other person due to such condition. Unless otherwise mutually agreed by the parties, Licensee shall remove all of the Equipment and, at Licensor's election, any other items installed by Licensee upon the expiration or any earlier termination of the Term (as extended), and shall leave the Licensed Area and the Property in substantially the same condition that existed as of the date of this License, ordinary wear and tear and occurrences for which Licensee is not responsible hereunder, excepted.

5. **Indemnification; No Consequential or Indirect Damages.** Licensee shall defend, indemnify and hold Licensor harmless against any and all claims, liabilities, losses, costs, damages and expenses resulting from or arising out of the use or occupancy of the Property by Licensee or its employees, agents or contractors, provided, however, Licensee shall have no obligation to indemnify or hold harmless against any such liabilities and losses to the extent caused by the negligence of Licensor or its employees, agents or contractors. Licensor will defend, indemnify and hold Licensee harmless from and against claims, liabilities, costs, expenses and damages caused by the presence of hazardous substances on the Property that are not placed or released by Licensee or its agents or contractors.

6. **Operation of Equipment.** Licensee will install, operate and maintain its Equipment in accordance with applicable laws and regulations so as not to cause interference (as that term is defined in the rules and regulations of the Federal Communications Commission), with any radio or television transmitting or receiving equipment whether or not such equipment is located on the Licensed Site. In the event that Licensee's Equipment causes interference with other radio or television transmissions, Licensee will promptly take all reasonable steps necessary to correct and eliminate the same. If Licensee is unable to eliminate the interference within a reasonable period of time, Licensee agrees to remove the Equipment from the Licensed Site and this License shall be terminated.

Site Name: Greystone Mansion

Site No: EL0457-91

7. **Insurance.** Licensee agrees that at all times during the term of this License and any renewal or extension thereof, it shall, at Licensee's sole cost and expense, maintain in force insurance policies which will insure and indemnify Licensor against liability or financial loss resulting from any suits, claims or actions and from all costs and expenses of litigation, in an amount of Three Million Dollars (\$3,000,000) per occurrence combined single limit for any injury to persons and/or damage to property in or about the Licensed Site by reason of the sue and occupation by Licensee or by any other person or persons of the Licensed Site together with endorsement as set forth on the standard ACORD Certificate of Insurance. Not more frequently than once each year, if, in the opinion of the insurance broker or consultant retained by Licensor, the amount of public liability and property damage insurance coverage at that time is not adequate, Licensee shall increase the insurance coverage as required by Licensor's insurance broker or consultant.

Licensee shall, at Licensee's sole cost and expense, obtain and at all times during the term hereof maintain in effect, insurance covering: (a) the improvements made by or on behalf of Licensee, at Licensee's expense under this License; (b) fixtures, furnishings, and equipment installed or placed by Licensee, providing protection to the extent of not less than the insurable value of all such items against any peril included under insurance industry practices in Beverly Hills, California within the classification "fire and extended coverage," together with insurance against vandalism, malicious mischief, and sprinkler leakage or other sprinkler damage. The parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Licensed Site, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. Licensee's policies of insurance shall waive the insurer's right of subrogation against Licensor.

Licensee's policies shall be issued by an insurer rated in Best's Insurance Guide with a financial rating of B+ VII or better. Such policies shall provide that the insurance coverage shall not be cancelled by the insurance carrier without endeavoring to provide Licensor at least thirty (30) days' prior written notice thereof by such carrier. Licensee agrees that it will not cancel or reduce such insurance coverage. At all times during the term of this License and prior to taking possession, Licensee shall provide to Licensor a certificate from the insurance carrier or carriers showing that such insurance policies are in effect in the amounts above provided. **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY CONTAINED IN THIS LEASE, LICENSEE SHALL NOT HAVE THE RIGHT TO TAKE POSSESSION UNTIL SUCH CERTIFICATE OR CERTIFICATES ARE DELIVERED.**

Licensee agrees that if it does not keep such insurance in full force and effect, Licensor may, after ten (10) days written notice to Licensor, take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed to be a part of the rental in addition to the usual monthly rent and payable as such within ten (10) days after written demand from Licensor, including reasonably supporting documentation.

8. **Assignment.** No assignment of this License or subletting of the Licensed Area shall be permitted without the express written consent of Licensor in its sole and absolute discretion, nor shall Licensee otherwise permit any person or entity to use the fiber optic cable of Licensee or adjacent fiber optic cable of Licensor.

9. **Electrical Service/Telephone Service (Fiber Transport).** Licensee agrees, at Licensee's sole cost and expense, to pay for the electric service/telephone service (Fiber Transport) and fees needed for the operation of Licensee's equipment. Licensor agrees to grant the electric utility company any necessary permission,

Site Name: Greystone Mansion
Site No: EL0457-91

including a temporary easement acceptable to Licensor at locations acceptable to Licensor, for the electric line and meter installation, should the electric utility company require written permission or temporary easement.

In the event Licensee cannot secure its own metered electrical supply, Licensee will have the right, at its own cost and expense, to submeter from Licensor. When submetering is required under this Agreement, Licensor will read the meter and provide Licensee with an invoice and usage data on a monthly basis. Licensor agrees that it will not include a markup on the utility charges. Licensor further agrees to provide the usage data and invoice on forms provided by Licensee and to send such forms to such address and/or agent designated by Licensee. Licensee will remit payment within forty-five (45) days of receipt of the usage data and required forms. If Licensee submeters electricity from Licensor, Licensor agrees to give Licensee at least twenty-four (24) hours advanced notice of any planned interruptions by Licensor of said electricity. Licensor acknowledges that Licensee provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Licensee's reasonable determination, Licensor agrees to allow Licensee the right to bring in a reasonable temporary source of power for the duration of the interruption, subject to reasonable conditions. Licensor will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Licensor, of such services to be furnished or supplied by Licensor. Licensor shall not be in default under this License unless Licensor fails to cure the default within 30 days after written notice from Licensee

10. **Notices.** Any notice or demand required or permitted to be given or made hereunder shall be deemed given if sent by reputable overnight messenger delivery, or by certified mail in a sealed envelope, postage prepaid, addressed in the case of Licensor to:

City of Beverly Hills
Finance Department
455 N. Rexford Drive
Beverly Hills, CA 90210

and addressed in the case of Licensee, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: EL0457-91; Cell Site Name: Greystone Mansion (CA)
Fixed Asset No: 10151248
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a copy to Licensee's Regional Counsel:

Site Name: Greystone Mansion
Site No: EL0457-91

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: EL0457-91; Cell Site Name: Greystone Mansion (CA)
Fixed Asset No: 10151248
P.O. Box 97061
Redmond, WA 98073-9761

Notice sent by certified mail shall be deemed delivered on the date of delivery (or refusal to accept delivery) shown on the return receipt. Notice by reputable overnight delivery services shall be deemed given one (1) business day after delivery to the applicable delivery service for overnight delivery.

11. **Waiver.** Failure or delay on the part of Licensor or Licensee to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

12. **Prior Negotiations.** This License constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and shall supersede all prior offers, negotiations and agreements.

13. **Amendment.** No revision of this contract shall be valid unless made in writing and signed by duly authorized officers or representatives of Licensee and Licensor.

14. **Licensor's Representations.** Licensor represents and warrants that it owns or otherwise controls the Licensed Site during the Term of this License and that Licensor has full authority to execute and deliver this License.

15. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of California.

16. **City Acting in Proprietary Capacity; No Waiver of Governmental Rights.** Nothing herein (and no consent or approval given by Licensor hereunder) shall constitute a waiver or alteration of any of Licensor's rights or obligations in its governmental capacity.

IN WITNESS WHEREOF, the parties have executed this License as of the ____ day of _____, 2010.

Site Name: Greystone Mansion
Site No: EL0457-91

LICENSOR:

CITY OF BEVERLY HILLS

By: _____
Jimmy Delshad,
Mayor

Attest:

Byron Pope, City Clerk

APPROVED AS TO FORM:

By: Laurence S. Weiner
Laurence S. Weiner,
City Attorney

APPROVED AS TO CONTENT:

David Schirmer
David Schirmer, Chief Information Officer

Jeffry Kolin, City Manager

LICENSEE:

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation
Its Manager

By: Mark Rivera
Name: MARK RIVERA
Title: REAL ESTATE & CONSTRUCTION

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On September 14, 2010 before me, Alma Pineda-Notary Public
Date Here Insert Name and Title of the Officer

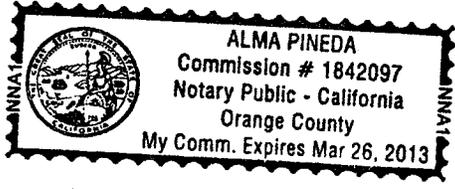
personally appeared Mark Rivera
Name(s) of Signer(s)

who 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.

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.

Signature Alma Pineda
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

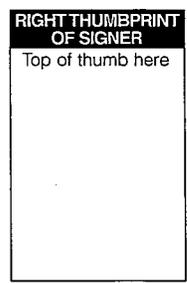
Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____



Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____



Site Name: Greystone Mansion
Site No: EL0457-91

EXHIBIT "A"

(Attached.)

Contacts

Const Super on site
Roobik Delanian
310-420-5911

City of B.H. parks
David Garrard
310-678-1150

City of B.H. IT
Chuck Saldumbide
310-285-2592
csaldumbide@beverly

Mobility will place fiber cable from the guard house to the COW location using the City's 4" conduit for the first 300' and placing a 2" conduit for the last 150'. This 450' cable section will be owned by Mobility.

Schuyler Rd

Permanent site location

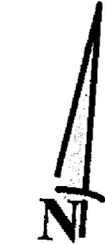
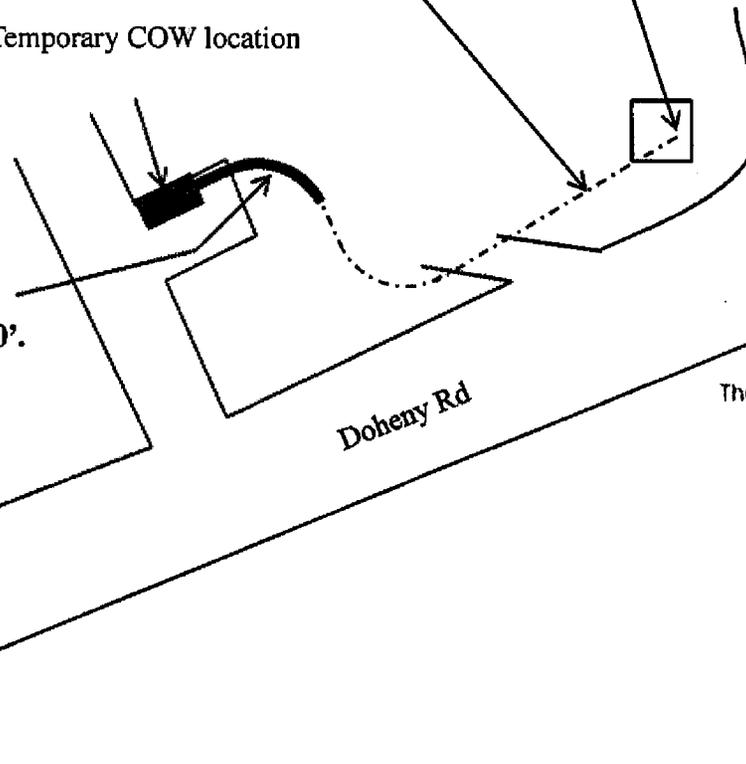


Existing telco terminal and City of Beverly Hills fiber cable. In basement of guard house.
Existing telco is house cable (not ATT wireline).
Other end of fiber cable located at City of Beverly Hills Data Center.

4" conduit has been placed
By the City of Beverly Hills

Temporary COW location

Loma Vista Drive



The new  at&t
Your world. Delivered.

No Scale
EL0457
905 Loma Vista Drive
Beverly Hills
Bob Holte
714-478-2564
6-23-10
Revised 8-11-10
Revised 8-17-10