



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Agreement with Cellular One for Lease of Property at 1331 South Ham Lane

**MEETING DATE:** February 1, 1995

**PREPARED BY:** Public Works Director

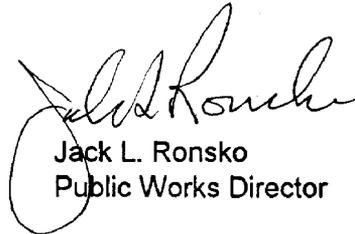
**RECOMMENDED ACTION:** That the City Council authorize the City Manager to execute the attached Lease Agreement with McCaw Communications of Stockton, Inc. for the purpose of installing an antenna and a small equipment building on City property.

**BACKGROUND INFORMATION:** In November 1994, we received the attached letter from Cellular One, dated November 1, 1994, which indicated Cellular One was looking for an antenna site in or near Kofu Park. Upon evaluation of the Park and Municipal Service Center facilities, it was determined the City did have an unused area within the Municipal Service Center's open storage area that could be leased or rented out. This area is shown on Exhibit B of the attached Agreement.

The proposed area is within the fenced open storage of the Municipal Service Center. When developed by Cellular One, this area will be fenced and will have access off of the public access road in Kofu Park immediately west of the existing tennis courts. The area of ground we will be leasing is approximately 24 feet by 50 feet. The area will contain an 80-foot antenna and a 12-foot by 28-foot equipment building. The rent for this parcel of land will be \$650 per month. The rent is tied to the Consumer Price Index for annual adjustments. The tenant will obtain all required permits and will pay all costs involved in the development of this site.

The City Attorney has reviewed and approved the attached Agreement as to form.

**FUNDING:** Not applicable. This will provide the City with additional General Fund revenues of \$7,800 per year.

  
Jack L. Ronsko  
Public Works Director

JLR/im

**Attachments**

cc: City Attorney  
Parks and Recreation Director  
Finance Director  
Cellular One

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



recycled paper

State: California  
Market: Stockton  
Cell ID: So. Lodi  
5573-95-008

### OPTION AND SITE LEASE AGREEMENT

THIS OPTION AND SITE LEASE AGREEMENT (this "Agreement") is entered into this \_\_\_ day of January, 1995 between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

For the sum of Six Hundred Fifty Dollars (\$650.00) the ("Option Fee") to be paid to Landlord by Tenant within fifteen (15) working days after full execution of this Agreement and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### A. OPTION

1. Premises. Subject to the following terms and conditions, Landlord grants to Tenant an option (the "Option") to lease a portion (the "Premises") of the real property (the "Property") described in Exhibit A attached hereto and incorporated herein by this reference. The Premises, located at 1331 S. Ham Lane, Lodi, CA are comprised of 825 square feet and are situated within the Property as described and/or depicted in Exhibit B attached hereto and incorporated herein by this reference.

2. Option Term. The Option shall be for an initial term of twelve (12) months commencing upon the date set forth above (the "Initial Option Period") and may be extended for an additional twelve (12) months upon notification to Landlord by Tenant and upon payment of additional consideration in the sum of Six Hundred Fifty Dollars (\$650.00) ("Additional Option Fee") prior to the end of the Initial Option Period.

3. Cooperation. During the Initial Option Period and any extensions thereto and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining and maintaining, at Tenant's sole expense, all licenses and permits required for Tenant's use of the Premises (the "Governmental Approvals") and Landlord agrees to allow Tenant to perform surveys, soils testing, and other engineering procedures on, under, and over the Property necessary to determine that the Premises will be acceptable to Tenant's engineering specifications, system design, and Governmental Approvals.

4. Exercise of Option. Tenant may exercise this Option by notifying Landlord in writing prior to the expiration of the Initial Option Period or any extension thereto that Tenant is exercising its Option.

B. **LEASE**

5. Lease Term. In the event that Tenant exercises the Option, the term of this lease (this "Lease") shall be five (5) years, commencing upon the date Tenant gives written notice to Landlord that Tenant is exercising its Option ("Commencement Date"), which shall in any event be prior to the expiration of the Initial Option Period or any extension thereof, and terminating at midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for five (5) additional five (5) year terms ("Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant shall notify Landlord of Tenant's intention not to renew this Lease at least ten (10) days prior to the expiration of the term or any Renewal Term.

6. Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals in any and all frequencies, for the construction and maintenance of related facilities, towers, antennas, or buildings and for related activities.

7. RENT.

a. Upon the Commencement Date, Tenant shall pay Landlord, as rent, the sum of Six Hundred Fifty Dollars (\$650.00) per month ("Rent"). Rent shall be payable on the first day of each month in advance to City of Lodi at Landlord's address specified in Paragraph 17 below. If the Lease is commenced other than on the first day of a month, the Rent shall be prorated for that first month for the number of days from the Commencement Date to the end of the month.

b. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to Tenant.

c. Rent shall be increased as of the term anniversary of the Commencement Date ("Adjustment Date") by a percentage equal to the percentage increase in the Consumer Price Index ("CPI") for the San Francisco Metropolitan Statistical Area on the Adjustment Date over the CPI for the month in which the Commencement Date or the last Adjustment Date, as the case may be, occurred. However, Rent shall not be increased more than Twenty-Five percent (25%) of the rent for the previous term. Rent shall not be decreased below the Rent for the previous term. Landlord shall be responsible for communicating the amount of the rental adjustment to Tenant and shall provide Tenant with supporting data upon which the adjustment is calculated.

d. As additional consideration, Tenant agrees to give to Landlord three (3) cellular telephones, at no cost to Landlord, not to exceed Five Hundred Dollars (\$500.00) in cost, **upon execution of Lease.**

Landlord is responsible for any installation fee and all customary service charges connected with the use of said cellular telephone, including but not limited to activation, access, air time, long distance and toll charges.

8. Interference. Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use any portion of Landlord's properties in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Tenant, and therefore Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to elect to enjoin such interference or to terminate this Lease, upon notice to Landlord.

9. Improvements; Utilities; Access.

a. Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation an antenna tower and base, radio transmitting and receiving antennas, and an electronic equipment (collectively the "Antenna Facilities"). The Antenna Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Antenna Facilities during the term and following any termination of this Lease.

b. Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities on (or to bring utilities across) the Property in order to service the Premises and the Antenna Facilities. Landlord shall execute an easement evidencing this right upon Tenant's request.

c. Landlord shall provide Tenant ingress, egress, and access from an open and improved public road to the Premises adequate to service the Premises and the Antenna Facilities at all times during the term of this Lease or any renewal thereof at no additional charge to Tenant. Landlord shall execute an easement evidencing this right upon Tenant's request.

10. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability, on thirty (30) days written notice as follows: (a) by either party upon a default of any covenant or term hereof by the other party, which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); (b) by Tenant if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's

business; or (c) by Tenant if the Premises are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong. Upon termination, Tenant will return the Premises to its original condition, normal wear and tear and casualty excepted. However, Tenant will not be responsible for the replacement of any trees, vegetation and/or shrubs or for the reduction of any foundation to a depth greater than one foot below grade.

11. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Premises which is directly attributable to Tenant's use of the Premises, and Landlord agrees to furnish proof of such increase to Tenant.

12. Insurance.

a. Tenant will provide Commercial Liability Insurance in an aggregate amount of \$1,000,000.00 and name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsement to any umbrella policy of liability insurance Tenant may maintain.

b. Landlord and Tenant agree that in the event of loss or damage to property due to any peril which is covered by an insurance policy maintained by either of the parties, the parties shall look solely to such insurance for recovery, and provided that the loss is covered by the insurance policy, neither party shall be liable to the other. In the event of such an insured loss, neither party's insurance company shall have a subrogated claim against the other party. Prior to commencement of the Lease, each party shall provide to the other proof, whether by copy of the policy or endorsement, that it has obtained the waiver of subrogation provided by this paragraph.

13. Destruction of Property. If the Property or the Premises are destroyed or damaged so as, in Tenant's judgment, to hinder the effective use of the Antenna Facilities, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Landlord not more than forty-five (45) days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant.

14. Condemnation. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's determination to render the Premises unsuitable for the use which Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective

interests in the Property (which for Tenant shall include, where applicable, the value of its Antenna Facilities, moving expenses, prepaid Rent and business dislocation expenses). Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.

15. Indemnity and Hold Harmless. Tenant agrees to indemnify and hold Landlord harmless from any and all claims arising from the installation, use, maintenance, repair or removal of Tenant's Antenna Facilities, except to the extent such claims arise from the negligent or intentional acts or omissions of Landlord, its agents or independent contractors.

16. Right of First Refusal. This paragraph deleted from Agreement.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Landlord, to: City of Lodi  
P. O. Box 3006  
221 W. Pine  
Lodi, CA 95241-1910  
Attn: Thomas A. Peterson, City Manager

If to Tenant, to: Cellular One  
1750 Howe Avenue, Suite 102  
Sacramento, CA 95825  
Attn: Director of Operations

With a copy to: McCaw Cellular Communications, Inc.  
Legal Department  
1750 Howe Avenue, Suite 300  
Sacramento, California 95825  
Attention: General Counsel

18. Title and Quiet Enjoyment.

a. Landlord warrants that it (i) has full right, power and authority to execute this Agreement; and (ii) has good and unencumbered title to the Property free and clear of any liens or mortgages, except as set forth in Exhibit C attached hereto. Landlord further warrants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease or any renewal thereof.

b. Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Tenant, such title report shows any

defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises or Tenant's ability to obtain leasehold financing, Tenant shall have the right to cancel this Lease immediately upon written notice to Landlord.

c. Tenant shall also have the right to have the Property surveyed, and, in the event that any defects are shown by the survey which, in the opinion of Tenant, may adversely affect Tenant's use of the Premises or Tenant's ability to obtain leasehold financing, Tenant shall have the right to terminate this Lease immediately upon written notice to Landlord.

d. Landlord represents and warrants to Tenant that to the best of Landlord's knowledge hazardous substances have not been generated, stored or disposed of on the Premises nor have the same been transported to or over the Premises. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Landlord will hold Tenant harmless from and indemnify Tenant against and from any damage, loss, expenses or liability resulting from any breach of this representation and warranty including all attorneys' fees and costs incurred as a result thereof.

19. Assignment. Tenant may assign or sublet this Lease upon notice to Landlord. Any sublease that is entered into by Tenant shall be subject to the provision of this Lease. Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any such mortgagees or holders of security interests including their successor or assigns (hereinafter collectively referred to as "Mortgagees"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant except that the cure period for any Mortgagee shall not be less than ten (10) days after receipt of the default notice.

20. Successors and Assigns. This Lease shall run with the Property described in Exhibit A. This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

21. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal

property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and Landlord gives Tenant the right to remove all or any portion of same from time to time in Tenant's sole discretion and without Landlord's consent.

22. Miscellaneous.

a. The substantially prevailing party in any litigation or other proceeding arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

b. Each party agrees to furnish to the other such truthful estoppel information as the other may reasonably request.

c. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

d. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

e. Landlord agrees to cooperate with Tenant in executing any documents (including but not limited to a Memorandum of Option and Site Lease Agreement and Nondisturbance and Attornment Agreement) necessary to protect Tenant's rights hereunder or Tenant's use of the Premises. Landlord acknowledges that a Memorandum of the Agreement will be recorded in the Official Records of the County where the Property is located. Upon the expiration or earlier termination of this Agreement, Tenant agrees to record a quitclaim deed to evidence the termination of Tenant's interest in the Property.

f. This Lease shall be construed in accordance with the laws of the state in which the Property is located.

g. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

DATED as of the date first set forth above.

LANDLORD:

City of Lodi

By: Thomas A. Peterson

Its:

Tax I.D.# 94-6000361

By: Jennifer M. Perrin

Its: City Clerk



By: Bob McNatt

Its: City Attorney

TENANT:

McCaw Communications of Stockton, Inc.

By: Brian Gavin

Its: Director of Technical Services

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public, personally appeared \_\_\_\_\_ personally known to me (or 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public, personally appeared \_\_\_\_\_ personally known to me (or 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

State of California

County of Sacramento

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public, personally appeared \_\_\_\_\_ personally known to me (or 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT



STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

On \_\_\_\_\_, before me, PENNY RIGGS, Notary Public, personally appeared BRIAN GAVIN.

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.

\_\_\_\_\_  
Penny Riggs, Notary Public

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title Type of Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Date of Document: \_\_\_\_\_

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

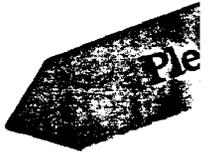
**EXHIBIT A**

to the Agreement dated January \_\_, 1995 between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

The Property is legally described as follows:

APN: 031-04-003  
1331 S. Ham Lane  
Lodi, CA

A survey will replace this Exhibit A within 60 days at leases execution.



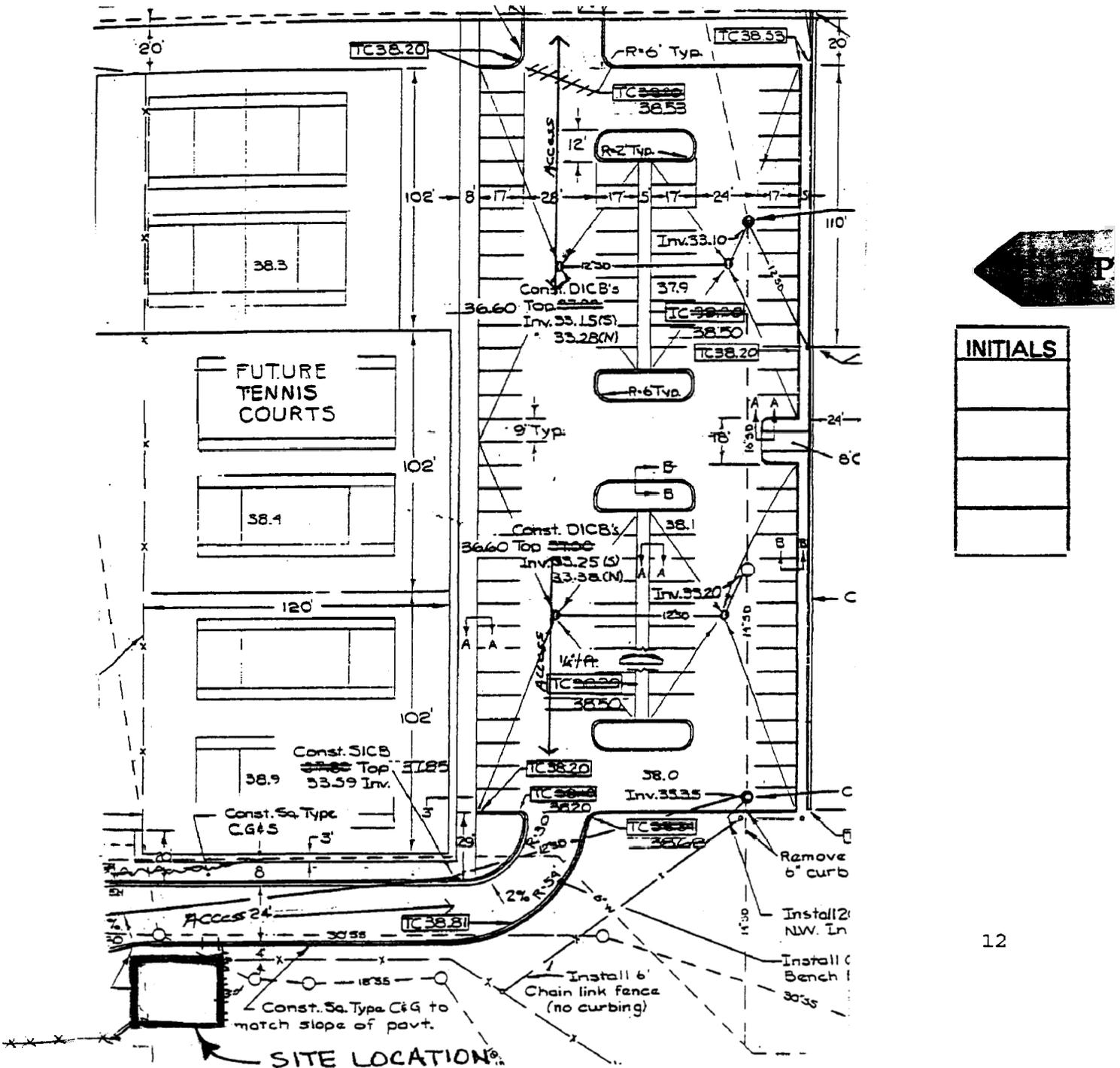
INITIALS

EXHIBIT B

to the Agreement dated January \_\_, 1995 between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

The location of the Premises within the Property is more particularly described or depicted as follows:

A land survey will replace this Exhibit B upon receipt thereof by Tenant.



November 1, 1994

Tom Peterson, City Manager  
City of Lodi  
221 West Pine Street  
Lodi, Ca 95240

Subject: Cellular Communication Site on City of Lodi property

Dear Mr. Peterson,

Thank you for talking with me today regarding the possibility of entering into an agreement to lease an area from the City to locate a new cell site near Kofu Park or near the maintenance facility.

Cellular One has a firm commitment to provide quality cellular service in Lodi by increasing the capacity for the general public to use cellular phones in your community. Cellular One has picked an area near the area described above to locate the new cell site.

The proposal includes the following;

- \* An initial lease term of five (5) years with several five (5) year options to renew.
- \* Monthly lease payment to begin at \$650 per month, with rental to increase by an amount equal to the CPI each five year term.
- \* The area to be leased would be large enough to place a 12' by 28' equipment shelter and erect a 100' monopole, an area approximately 600 to 750 sq. ft.
- \* Cellular One would extend power and telco services to the site, and utility service would be separately metered.
- \* Cellular One would need twenty four (24) hour access to the site, subject to the security procedures in force on your property.

It would be helpful for both parties to set-up a joint meeting including City Officials and Cellular One staff to answer any questions, and then if it appears the proposal is acceptable to both parties, we could provide you with a lease agreement for your review.

I look forward to hearing from you. Please call me at 916-648-7530 (office) or 916-947-8692 which is my cellular number.

Very truly yours,

A handwritten signature in cursive script, appearing to read "L. G. Lyle".

L G Lyle

Site Acquisition Consultant

CITY COUNCIL

STEPHEN J. MANN, Mayor  
DAVID P. WARNER  
Mayor Pro Tempore  
RAY G. DAVENPORT  
PHILLIP A. PENNINO  
JACK A. SIEGLOCK

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6706  
FAX (209) 333-6795

THOMAS A. PETERSON  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
BOB McNATT  
City Attorney

January 26, 1995

Mr. L. G. Lyle, Site Acquisition Consultant  
Cellular One  
1750 Howe Ave., Ste. 102  
Sacramento, CA 95825

**SUBJECT: Agreement with Cellular One for Lease of Property at 1331 South Ham Lane**

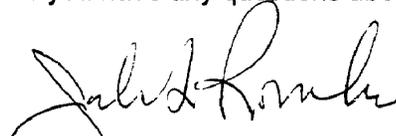
Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, February 1, 1995, at 7 p.m. The meeting will be held in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. I will be sharing with the City Council that we are still discussing the exact dimension of the site. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Jennifer Perrin, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call me at (209) 333-6709.



Jack L. Ronsko  
Public Works Director

JLR/Im

Enclosure

cc: City Clerk ✓

CITY COUNCIL

STEPHEN J. MANN, Mayor  
DAVID P. WARNER  
Mayor Pro Tempore  
RAY C. DAVENPORT  
PHILLIP A. PENNINO  
JACK A. SIEGLOCK

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6706  
FAX (209) 333-6795

*City Clerk*

THOMAS A. PETERSON  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
BOB McNATT  
City Attorney

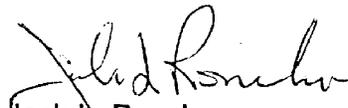
February 3, 1995

Cellular One  
Attention L. G. Lyle  
1750 Howe Avenue, Suite 102  
Sacramento, CA 95825

SUBJECT: Approval of Agreement Between City of Lodi and McGaw  
Communications

The City Council at its meeting of February 1, 1995, approved the agreement submitted to us, conditioned upon the changes shown on the enclosed sheets being made. The execution of this agreement by the City Manager will be held until we can work out the exact dimensions of the site, location of antenna, gates, access easements, etc., and the attached changes are made in the final agreement.

If you have any questions concerning the Council approval, please contact me.

  
Jack L. Ronsko  
Public Works Director

JLR/pmf

Enclosure - 4 sheets

cc: City Attorney  
City Clerk

State: California  
Market: Stockton  
Cell ID: So. Lodi  
5573-95-008

**OPTION AND SITE LEASE AGREEMENT**

THIS OPTION AND SITE LEASE AGREEMENT (this "Agreement") is entered into this \_\_\_ day of January, 1995 between City of Lodi ("Landlord") and McCaw Communications of Stockton, Inc. ("Tenant").

For the sum of Six Hundred Fifty Dollars (\$650.00) the ("Option Fee") to be paid to Landlord by Tenant within fifteen (15) working days after full execution of this Agreement and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**A. OPTION**

1. Premises. Subject to the following terms and conditions, Landlord grants to Tenant an option (the "Option") to lease a portion (the "Premises") of the real property (the "Property") described in Exhibit A attached hereto and incorporated herein by this reference. The Premises, located at 1331 S. Ham Lane, Lodi, CA are comprised of 825 square feet and are situated within the Property as described and/or depicted in Exhibit B attached hereto and incorporated herein by this reference.

2. Option Term. The Option shall be for an initial term of twelve (12) months commencing upon the date set forth above (the "Initial Option Period") and may be extended for an additional twelve (12) months upon notification to Landlord by Tenant and upon payment of additional consideration in the sum of Six Hundred Fifty Dollars (\$650.00) ("Additional Option Fee") prior to the end of the Initial Option Period.

3. Cooperation. During the Initial Option Period and any extensions thereto and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining and maintaining, at Tenant's sole expense, all licenses and permits required for Tenant's use of the Premises (the "Governmental Approvals") and Landlord agrees to allow Tenant to perform surveys, soils testing, and other engineering procedures on, under, and over the Property necessary to determine that the Premises will be acceptable to Tenant's engineering specifications, system design, and Governmental Approvals.

4. Exercise of Option. Tenant may exercise this Option by notifying Landlord in writing prior to the expiration of the Initial Option Period or any extension thereto that Tenant is exercising its Option.

*Needs to be resolved  
This area is not correct*

B. LEASE

5. Lease Term. In the event that Tenant exercises the Option, the term of this lease (this "Lease") shall be five (5) years, commencing upon the date Tenant gives written notice to Landlord that Tenant is exercising its Option ("Commencement Date"), which shall in any event be prior to the expiration of the Initial Option Period or any extension thereof, and terminating at midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for five (5) additional five (5) year terms ("Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant shall notify Landlord of Tenant's intention not to renew this Lease at least ten (10) days prior to the expiration of the term or any Renewal Term.

6. Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals in any and all frequencies, for the construction and maintenance of related facilities, towers, antennas, or buildings and for related activities. *The antenna mast shall not exceed 80 feet above ground level and shall not contain any*

7. RENT. *circular dish type transmission or ~~re~~ reception equipment.*

a. Upon the Commencement Date, Tenant shall pay Landlord, as rent, the sum of Six Hundred Fifty Dollars (\$650.00) per month ("Rent"). Rent shall be payable on the first day of each month in advance to City of Lodi at Landlord's address specified in Paragraph 17 below. If the Lease is commenced other than on the first day of a month, the Rent shall be prorated for that first month for the number of days from the Commencement Date to the end of the month.

b. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to Tenant.

c. Rent shall be increased as of the term anniversary of the Commencement Date ("Adjustment Date") by a percentage equal to the percentage increase in the Consumer Price Index ("CPI") for the San Francisco Metropolitan Statistical Area on the Adjustment Date over the CPI for the month in which the Commencement Date or the last Adjustment Date, as the case may be, occurred. However, Rent shall not be increased more than Twenty-Five percent (25%) of the rent for the previous term. Rent shall not be decreased below the Rent for the previous term. Landlord shall be responsible for communicating the amount of the rental adjustment to Tenant and shall provide Tenant with supporting data upon which the adjustment is calculated.

d. As additional consideration, Tenant agrees to give to Landlord three (3) cellular telephones, at no cost to Landlord, not to exceed Five Hundred Dollars (\$500.00) in cost, upon execution of Lease.

Landlord is responsible for any installation fee and all customary service charges connected with the use of said cellular telephone, including but not limited to activation, access, air time, long distance and toll charges.

8. Interference. Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use any portion of Landlord's properties in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Tenant, and therefore Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to elect to enjoin such interference or to terminate this Lease, upon notice to Landlord.

physical -

9. Improvements; Utilities; Access.

a. Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation an antenna tower and base, radio transmitting and receiving antennas, and an electronic equipment (collectively the "Antenna Facilities"). The Antenna Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Antenna Facilities during the term and following any termination of this Lease.

(b) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities on (or to bring utilities across) the Property in order to service the Premises and the Antenna Facilities. Landlord shall execute an easement evidencing this right upon Tenant's request. LANDLORD MAY LOCATE OR RELOCATE AT TENANT'S EXPENSE, SUCH EASEMENTS TO ACCOMMODATE CHANGED CIRCUMSTANCES

c. Landlord shall provide Tenant ingress, egress, and access from an open and improved public road to the Premises adequate to service the Premises and the Antenna Facilities at all times during the term of this Lease or any renewal thereof at no additional charge to Tenant. Landlord shall execute an easement evidencing this right upon Tenant's request. Landlord may locate or relocate, at tenant's expense, such easements to accommodate changed circumstances.

10. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability, on thirty (30) days written notice as follows: (a) by either party upon a default of any covenant or term hereof by the other party, which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); (b) by Tenant if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's

