



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Lease Agreement with MetroPCS California for 114 North Main Street

MEETING DATE: June 6, 2012

PREPARED BY: Public Works Director

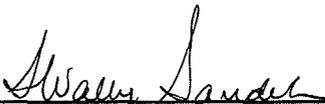
RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute lease agreement with MetroPCS California for 114 North Main Street.

BACKGROUND INFORMATION: MetroPCS California has requested a lease of City property located at 114 North Main Street for the purpose of installing communication equipment. MetroPCS will be leasing space on the water tower, as well as ground space for the operation of a wireless communication site, as shown on Exhibit B of the attached lease agreement. MetroPCS will obtain all required permits and pay all costs involved with the construction of its facilities and installation of its equipment.

MetroPCS will be paying \$1,500 a month for rent, with a 3 percent escalator every year. The term of the lease agreement is five years, commencing on the date MetroPCS begins construction of its facilities, and contains the option to extend for four additional five-year terms.

FISCAL IMPACT: The lease will provide the City with General Fund revenue of approximately \$18,000 annually. MetroPCS will also make a one-time capital contribution of \$35,000.

FUNDING AVAILABLE: Not applicable.



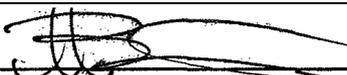
F. Wally Sandelin
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst

FWS/RAY/pmf

Attachment

cc: Susan Bjork, Supervising Budget Analyst

APPROVED: 

Konrad Bartlam, City Manager

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT (“Lease Agreement”) dated as of May _____, 2012 is made by and between MetroPCS California, LLC, a Delaware limited liability company (“Lessee”) and the CITY OF LODI, a municipal corporation (“Lessor” or the “City”).

R E C I T A L S

This Lease Agreement is entered into based upon the following facts, circumstances and understandings:

A. Lessor owns certain real property legally described in Exhibit “A” attached hereto and commonly known as 114 N. MAIN ST., LODI, CA 95240; Assessor’s Parcel Number 043-084-11 (“Lessor’s Real Property”). Lessee desires to lease a portion of Lessor’s Real Property together with any necessary easements over other portions of Lessor’s Real Property and/or shared use of Lessor’s easements over other real property necessary for Lessee’s access and utilities to the leased area (altogether the “Premises”), as described on Exhibit “B” attached hereto. Lessor represents and warrants that it has the complete right and authority to grant the rights set forth herein and that Lessor has full rights of ingress to and egress from the Premises from a public roadway.

B. Lessee desires to construct and operate a wireless communications site at the Premises.

C. Based on the foregoing facts, circumstances and understandings set forth herein and on the terms and conditions set forth below, Lessor is willing to lease the Premises to Lessee for Lessee’s proposed use subject to the terms and conditions of this Lease Agreement.

WHEREFORE, in consideration of the facts, circumstances and understandings set forth above and the terms and conditions set forth herein, the parties, intending to be legally bound, hereto agree as follows:

1. Grant of Lease. Lessor hereby leases to Lessee the Premises for Lessee’s proposed use, subject to the following terms and conditions for the Term.

2. Permitted Uses. The Premises may be used by Lessee for the operation of a wireless communications site. Under this Lease Agreement, Lessee may install, place, use and operate on the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, equipment cabinets, storage facilities, telephone facilities, microwave equipment, and related equipment (collectively “Lessee’s Facilities”) as Lessee deems necessary for the operation of its wireless communications site at the Premises. Further, Lessee may perform construction, maintenance, repairs, additions to, and replacement of Lessee’s Facilities as necessary and appropriate for its ongoing business and has the right to do all work necessary to prepare, modify and maintain the Premises to accommodate Lessee’s Facilities and as Lessee determines is required for Lessee’s communications operations at the Premises.

3. Conditions Precedent: Prior Approvals. This Lease Agreement is conditioned upon Lessee obtaining all governmental licenses, permits and approvals enabling Lessee to construct and operate wireless communications facilities on the Premises without conditions which are not standard or typical for premises where wireless communications facilities are located. Lessor agrees to cooperate with Lessee's reasonable requests for Lessor's signatures as real property owner on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to Lessor.

4. Term. The term of this Lease Agreement ("Term") shall be five (5) years commencing on the date (a) Lessee begins construction of Lessee's Facilities on the Premises or (b) twelve (12) months from the last date of execution by a party to this Lease Agreement, as reflected on the signature page below, whichever occurs first ("Commencement Date"). Lessee shall promptly deliver written notice to Lessor of the Commencement Date. Lessee shall have the right to extend the Term of this Lease Agreement for four (4) additional terms (each a "Renewal Term") of five (5) years each. The terms and conditions for each Renewal Term shall be the same terms and conditions as in this Lease Agreement, except that the Rent shall be increased as set forth hereinbelow. This Lease Agreement shall automatically be extended for each successive five (5) year Renewal Term unless either party notifies the other in writing of its intention not to extend this Lease Agreement at least one year prior to the expiration of the first Term or any Renewal Term.

5. Rent.

(a) Within forty-five (45) days of the Commencement Date, Lessee shall pay Lessor, as rent, the sum of ONE THOUSAND, FIVE HUNDRED and no/100 (\$1,500.00) ("Rent") per month. Rent shall be payable on the first day of each month, in advance, to Lessor or Lessor's alternate payee specified in Section 22, Notices and Deliveries. If the Commencement Date of this Lease Agreement is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease Agreement, or if this Lease Agreement is terminated before the expiration of any month for which Rent should have been paid. Rent shall be increased on each anniversary of the Commencement Date by an amount of three percent (3%) of the Rent paid during the year.

(b) Within forty-five (45) days of the Commencement Date, Lessee shall pay Lessor a one-time capital contribution in the amount *Thirty Five Thousand Dollars* (\$35,000).

6. Due Diligence Contingency and Pre-Commencement Date Access to Premises. Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease Agreement and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and any other reasonably necessary tests to determine the suitability of the Premises for Lessee's Facilities ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of Lessee's Facilities. During any Due Diligence activities or pre-construction work,

Lessee shall have insurance which covers such activities as set forth in Section 16, Insurance. Lessee will notify Lessor of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with Lessor. If in the course of its Due Diligence Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee shall have the right to terminate this Lease Agreement prior to the Commencement Date without any further liability or obligation to Lessor by delivery of written notice of termination to Lessor as set forth in Section 13, Termination.

7. Ongoing Access to Premises. Throughout the Term and any Renewal Term of this Lease Agreement, Lessee shall have the right of access without escort to the Premises for its employees and agents twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Lessee. In exercising its right of access to the Premises herein, Lessee agrees to cooperate with any reasonable security procedures utilized by Lessor at Lessor's Real Property and further agrees not to unduly disturb or interfere with the business or other activities of Lessor or of other tenants or occupants of Lessor's Real Property. Lessor shall maintain all existing access roadways or driveways extending from the nearest public roadway to the Premises in a manner sufficient to allow for Lessee's access to the Premises. Lessor shall be responsible for maintaining and repairing such roadways and driveways at Lessor's sole expense, except for any damage caused by Lessee's use of such roadways or driveways. If Lessee causes any such damage, Lessee shall promptly repair the same at its sole expense. Except those constructed by Lessee, Lessor, not Lessee, shall be responsible for the maintenance and compliance with laws of all towers and structures located on the Premises, including compliance with Part 17 of the Federal Communications Commissions' ("FCC") rules.

8. Lessee's Work, Maintenance and Repairs. All of Lessee's construction and installation work at the Premises shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall submit copies of the site plan and specifications (the "Plans") to the Lessor for prior approval, which approval will not be unreasonably withheld, conditioned or delayed. Lessor shall give such approval or provide Lessee with its requests for changes within five (5) business days of Lessor's receipt of Lessee's Plans. If Lessor does not provide such approval or request for changes within such five (5) business day period, Lessor shall be deemed to have approved the Plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's Plans. Lessee shall maintain Lessee's Facilities and the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors. Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall surrender the Premises in good condition, less ordinary wear and tear and may, at Lessor's option remove Lessee's Facilities. Lessee's obligations under this paragraph regarding removal of Lessee's Facilities shall survive the termination of this Agreement.

9. Title to Lessee's Facilities. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease Agreement. Lessor acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Lessee's Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Lessor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Lessee's Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise,

whether arising at law or otherwise, including, but not limited to any statutory landlord's lien; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings. However, no financing agreement shall include any rights in or to the Premises except for those rights established by this Agreement.

10. Utilities. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, conditioned, or delayed, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Real Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right. Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

11. Interference with Communications. Lessee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment which exist on Lessor's Real Property on the effective date of this Lease Agreement ("Pre-existing Communications"), and Lessee's Facilities and operations shall comply with all non-interference rules of the FCC. Upon written notice from Lessor of apparent interference by Lessee with Pre-existing Communications, Lessee shall have the responsibility to promptly terminate such interference or demonstrate to Lessor with competent information that the apparent interference in fact is not caused by Lessee's Facilities or operations. Lessor shall not, nor shall Lessor permit any other tenant or occupant of any portion of Lessor's Real Property to, engage in any new or altered activities or operations which interfere with the communications operations of Lessee described in Section 2, above. Such new or altered uses that cause interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such new or altered uses that cause interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessee, and therefore Lessee shall have the right to bring a court action to enjoin such interference or to terminate this Lease Agreement immediately upon notice to Lessor. Lessor agrees to incorporate equivalent provisions regarding non-interference with Pre-existing Communications into any subsequent leases, licenses or rental agreements with other persons or entities for any portions of Lessor's Real Property.

12. Taxes. Lessee shall pay personal property taxes assessed against Lessee's Facilities, and Lessor shall pay when due all real property taxes and all other taxes, fees and assessments attributable to the Premises and this Lease Agreement.

13. Termination. This Lease Agreement may be terminated by Lessee, in its sole discretion, effective immediately without further liability by delivery of written notice thereof to Lessor prior to the Commencement Date for any reason resulting from Lessee's Due Diligence, or if a title report obtained by Lessee for Lessor's Real Property shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises for Lessee's intended use, or for any other or no reason. This Lease may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Lessee, in its sole discretion, if it does not obtain licenses, permits or other approvals necessary to

the construction or operation of Lessee's Facilities ("Permits"), is unable to obtain such Permits without conditions which are not standard or typical for premises where wireless communications facilities are located or is unable to maintain such licenses, permits or approvals despite reasonable efforts to do so; (iii) by Lessee, in its sole discretion, if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of frequencies; or (iv) by Lessee if Lessee determines that the Premises are not appropriate or suitable for Lessee's operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Other than as stated herein, Lessor shall not have the right to terminate, revoke or cancel this Lease Agreement.

14. Destruction of Premises. If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment to hinder its effective use of Lessor's Property for the ongoing operation of a wireless communications site, Lessee may elect to terminate this Lease Agreement without further liability of Lessee as of the date of the damage or destruction by so notifying Lessor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this Lease Agreement shall cease as of the date of the damage or destruction.

15. Condemnation. If a condemning authority takes all of Lessor's Real Property, or a portion which in Lessee's sole opinion is sufficient to render the Premises unsuitable for Lessee's ongoing operation of a wireless communications site, then this Lease Agreement shall terminate without further liability of Lessee as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

16. Insurance Reuirements. Lessee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. In addition, the named insured on all such policies shall provide to the additional insureds identified herein any notices of cancellation of said insurance policies within 5 business days of receipt of such notice. Lessee shall, affirm under penalty of perjury that the required insurance on the project remains in place and said insurance has not been cancelled.

(a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.

(b) General Liability insurance with a minimum limit of liability per occurrence of \$3,000,000 for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual;

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

Lessee may satisfy the above requirements through a combination of its primary and umbrella/excess policies.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, Lessee shall promptly obtain a new policy, and submit a certificate thereof as hereinabove provided. Upon failure of Lessee to furnish, deliver or maintain such certificates as above provided, this Agreement, at the election of the City, may be forthwith declared suspended or terminated. Failure of Lessee to obtain and/or maintain any required insurance shall not relieve Lessee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of Lessee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by Lessee for the City. Lessee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. Lessee must deliver certificates evidencing existence of the insurance listed above to the City prior to the time the contract is signed.

LESSEE shall provide CITY with separate endorsements evidencing proof of the CITY's additional insured status as to both the general liability and automobile liability insurance policies. In addition, LESSEE shall provide CITY with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to this project, Lessee's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the LESSEE'S insurance and shall not contribute with it.

Lessee agrees to provide written notice of such cancellation to the City's Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240

17. Assignments or Transfers. Lessor may assign or transfer this Lease Agreement to any person or entity without any requirement for prior approval by Lessee. Lessee may assign or transfer this Lease Agreement without prior approval by Lessor to any of Lessee's partners, shareholders, members, subsidiaries, or affiliates, to any entity in which Lessee or any of its affiliates holds an ownership interest, or to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Lessee. Lessee shall provide Lessor with written notice of such assignment within ninety (90) days of such assignment. Lessee shall not assign or transfer this Lease Agreement to any other person or entity without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this

Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, 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.

18. Intentionally Deleted.

19. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.

(a) Except as set forth herein, so long as Lessee is not in default under this Lease Agreement, Lessee shall be entitled to quiet enjoyment of the Premises during the term of this Lease Agreement or any Renewal Term, and Lessee shall not be disturbed in its occupancy and use of the Premises.

(b) This Lease Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect Lessor's Real Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such subordination, Lessee shall execute and deliver promptly any certificate of subordination that Lessor may reasonably request, provided that such certificate acknowledges that this Lease Agreement remains in full force and effect, recognizes Lessee's right to nondisturbance and quiet enjoyment of the Premises so long as Lessee is not in default under this Lease Agreement, only contains true and accurate statements and Lessee's liability shall be capped at the remaining rent under this Lease Agreement. If any mortgagee or lender succeeds to Lessor's interest in Lessor's Real Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Lessee shall attorn to and recognize such successor as Lessor under this Lease Agreement.

(c) At any time upon not less than ten (10) days' prior written notice by Lessor, Lessee shall execute, acknowledge and deliver to Lessor or any other party specified by Lessor a statement in writing certifying that this Lease Agreement is in full force and effect, if true, and the status of any continuing defaults under this Lease Agreement.

20. Indemnifications.

(a) **Lessee's Indemnity.** Lessee hereby agrees to indemnify and hold Lessor and Lessor's elected and appointed officers, directors, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Lessee's use, operation, maintenance or repair of Lessee's Facilities at the Premises or access over Lessor's Real Property or Lessee's shared use of Lessor's easements for access to the Premises, except those resulting from the negligence or willful misconduct of Lessor or Lessor's officers, directors, partners, employees, agents, contractors or subcontractors.

(b) **Lessor's Indemnity.** Lessor hereby agrees to indemnify and hold Lessee and Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in

connection with Lessor's use, operation, maintenance or repair of improvements on Lessor's Real Property, any violation of governmental regulations relating to the Premises and any towers used by Lessee and owned by Lessor (including the lighting or painting for aviation pathways), except those resulting from the negligence or willful misconduct of Lessee or Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(c) **Special Damages.** Notwithstanding any other provision of this Lease Agreement, neither party shall be liable to the other for consequential damages, damages for lost profits, exemplary or punitive damages or other special damages, whether in tort, contract or equity.

(d) **Survival of Indemnity Provisions.** The indemnity provisions of this section shall survive the expiration, cancellation or expiration of this Lease Agreement for a period of one (1) year and any claims for indemnification under this Section 20 shall be brought within that period.

21. Hazardous Materials. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material (as defined below) on, under, about or within the Lessor's Real Property in violation of any law or regulation. Lessee agrees to defend, indemnify and hold harmless Lessor and Lessor's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. Lessor represents, warrants and agrees that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within Lessor's Real Property in violation of any law or regulation. Lessor agrees to defend, indemnify and hold harmless Lessee and Lessee's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any (i) use or disposal of any known Hazardous Material by **Lessor** on the Premises or (ii) breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which Lessor's Real Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

22. Notices and Deliveries. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery service to the address of the respective parties set forth below:

Lessor: CITY OF LODI
P. O. BOX 3006
221 W. PINE ST.
LODI, CA 95241-1910
Attn: RAD BARTLAM, CITY MANAGER
Telephone: (209) 333-6700
Facsimile: (209) 333-6710
Federal Taxpayer ID Number: _____

Lessee: MetroPCS California, LLC
785 Orchard Dr., Suite 200
Folsom, CA 95630

With a copy to: MetroPCS California, LLC
2250 Lakeside Blvd.
Richardson, TX 75082
Attn: Property Manager
Telephone: 214-265-2550
Facsimile: 866-457-4126

Lessor or Lessee may from time to time designate any other address for notices or deliveries by written notice to the other party.

23. Miscellaneous.

(a) **Severability.** If any provision of the Lease Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease Agreement to retain the economic effect of the invalid or unenforceable provisions.

(b) **Binding Effect.** Each party represents and warrants that said **party** has full power and authority, and the person(s) executing this Lease Agreement have full power and authority, to execute and deliver this Lease Agreement, and that this Lease Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) **Waivers.** No provision of this Lease Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease Agreement.

(d) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

(e) **Attorneys' Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and costs and court costs.

(f) **Survival.** Terms and conditions of this Lease Agreement which by their sense and context survive the termination, cancellation or expiration of this Lease Agreement will so survive.

(g) **Memorandum of Lease Agreement.** Lessor acknowledges that a Memorandum of Lease Agreement substantially in the form annexed hereto as Exhibit C will be recorded by Lessee in the Official Records of the County where the Property is located.

(h) **Entire Agreement; Amendments.** This Lease Agreement constitutes the entire agreement and understanding between the parties regarding Lessee's lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by duly authorized representatives of both parties.

(i) **No Presumptions Regarding Preparation of Lease Agreement.** The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease Agreement. Accordingly it is the intention and agreement of the parties that the language, terms and conditions of this Lease Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease Agreement.

[SIGNATURE PAGE POLLOWS]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease Agreement is effective as of the date first above written.

LESSOR

CITY OF LODI, a municipal corporation

By: _____

Name: Konradt Bartlam, City Manager

Date: _____

ATTEST:

By: _____

Name: Randi Johl, City Clerk

Date: _____

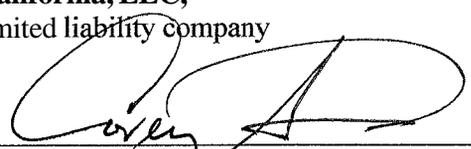
APPROVED AS TO FORM:

By: _____

Name: D. Stephen Schwabauer, City Attorney

LESSEE:

MetroPCS California, LLC,
a Delaware limited liability company

By: 

(Signature)

Name: Corey A. Linquist

Title: Vice President & General Manager

Date: 3 May 2012

EXHIBIT A

DESCRIPTION OF LESSOR'S REAL PROPERTY

to the Lease Agreement dated _____, 2012, by and between the CITY OF LODI, a municipal corporation, as Lessor, and MetroPCS California, LLC, a Delaware limited liability company, as Lessee.

Lessor's Property of which Premises are a part is described as follows:

All that real property situated in the City of Lodi, County of San Joaquin, State of California and being more particularly described as follows:

Lot numbers One, Two, Three and Four in Block Number 29, as said Lots are designated upon that certain map entitled, "Mokelumne," filed for record in the office of the County Recorder of San Joaquin County on August 25, 1869 in Volume 2 of Maps, at Page 12, San Joaquin County Records.

Assessor's Parcel Number: 043-084-11

EXHIBIT B

DESCRIPTION OF PREMISES

to the Lease Agreement dated _____, 2012, by and between the CITY OF LODI, a municipal corporation, as Lessor, and MetroPCS California, LLC, a Delaware limited liability company, as Lessee.

The Premises consist of those specific areas described/shown below or attached where Lessee's communications antennae, equipment and cables occupy Lessor's Real Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Real Property.

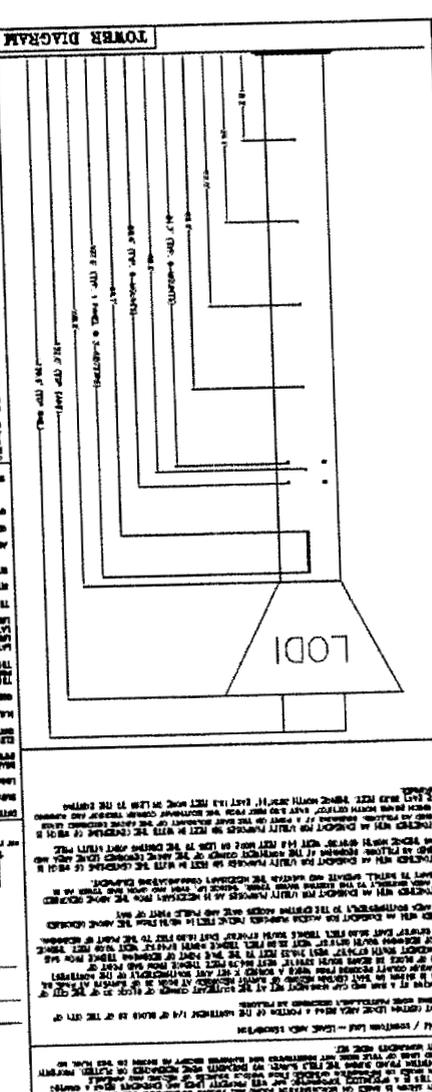
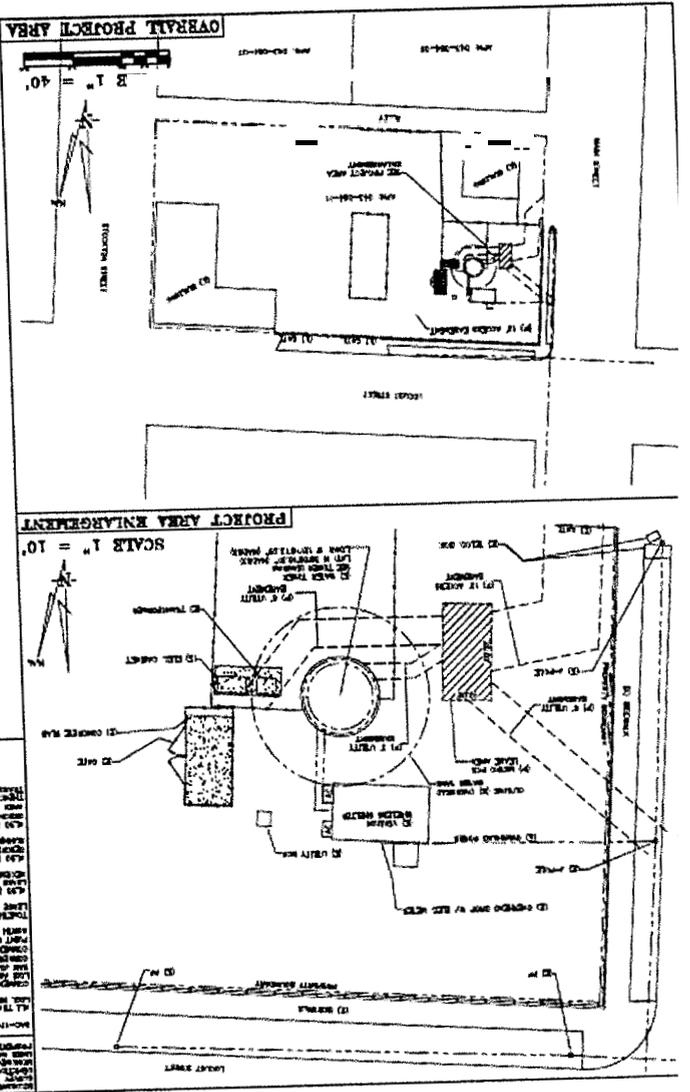
THE FOLLOWING ARE ATTACHED HERETO **AND** MADE A PART OF THIS EXHIBIT BY REFERENCE:

SHEET C-1: PLOT PLAN AND SITE TOPOGRAPHY

SHEET A-1: SITE PLAN

SHEET A-2: ELEVATION

*(A final drawing **or** copy of a property survey **or** site plan depicting the above shall replace this Exhibit B when initialed by Lessor or Lessor's designated agent and **may** be modified from time to time when initialed **by** both Lessor and Lessee.)*



TOWER DIAGRAM

SECTION OF TOWER AT LEVEL 100'

SECTION OF TOWER AT LEVEL 120'

SECTION OF TOWER AT LEVEL 140'

SECTION OF TOWER AT LEVEL 160'

SECTION OF TOWER AT LEVEL 180'

SECTION OF TOWER AT LEVEL 200'

SECTION OF TOWER AT LEVEL 220'

SECTION OF TOWER AT LEVEL 240'

SECTION OF TOWER AT LEVEL 260'

SECTION OF TOWER AT LEVEL 280'

SECTION OF TOWER AT LEVEL 300'

SECTION OF TOWER AT LEVEL 320'

SECTION OF TOWER AT LEVEL 340'

SECTION OF TOWER AT LEVEL 360'

SECTION OF TOWER AT LEVEL 380'

SECTION OF TOWER AT LEVEL 400'

SECTION OF TOWER AT LEVEL 420'

SECTION OF TOWER AT LEVEL 440'

SECTION OF TOWER AT LEVEL 460'

SECTION OF TOWER AT LEVEL 480'

SECTION OF TOWER AT LEVEL 500'

SECTION OF TOWER AT LEVEL 520'

SECTION OF TOWER AT LEVEL 540'

SECTION OF TOWER AT LEVEL 560'

SECTION OF TOWER AT LEVEL 580'

SECTION OF TOWER AT LEVEL 600'

SECTION OF TOWER AT LEVEL 620'

SECTION OF TOWER AT LEVEL 640'

SECTION OF TOWER AT LEVEL 660'

SECTION OF TOWER AT LEVEL 680'

SECTION OF TOWER AT LEVEL 700'

SECTION OF TOWER AT LEVEL 720'

SECTION OF TOWER AT LEVEL 740'

SECTION OF TOWER AT LEVEL 760'

SECTION OF TOWER AT LEVEL 780'

SECTION OF TOWER AT LEVEL 800'

SECTION OF TOWER AT LEVEL 820'

SECTION OF TOWER AT LEVEL 840'

SECTION OF TOWER AT LEVEL 860'

SECTION OF TOWER AT LEVEL 880'

SECTION OF TOWER AT LEVEL 900'

SECTION OF TOWER AT LEVEL 920'

SECTION OF TOWER AT LEVEL 940'

SECTION OF TOWER AT LEVEL 960'

SECTION OF TOWER AT LEVEL 980'

SECTION OF TOWER AT LEVEL 1000'

C-1

SHEET NUMBER

PLOT PLAN AND SITE TOPOGRAPHY

SHEET TITLE

OWNER'S NAME

DATE

APPROVALS

SCALE

GEN. ENGINEERING

METRO P.C.S.

CONTACTS

PROJECTS

REMARKS

Site No.: SAC-1/4Z - DOWNTOWN LODI
 Site Address: 114 N. MAIN ST. - LODI (SAN JOAQUIN COUNTY), CA 95240
 FINAL LEASE 5.1.12

EXHIBIT C
MEMORANDUM OF AGREEMENT

CLERK: Please return this document to: MetroPCS California, LLC
ADDRESS: 785 Orchard Dr., Suite 200
Folsom, CA 95630
Attn: Property Manager

This Memorandum of Agreement is entered into on this ____ day of _____, 2011, by and between the CITY OF LODI, a municipal corporation, with an office at P. O. Box 3006, Lodi, CA 95241-1910 (hereinafter referred to as "Lessor"), and MetroPCS California LLC, a Delaware limited liability company, with an office at 785 Orchard Dr., Suite 200, Folsom, CA 95630 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ["Agreement"] on the ____ day of May, 2012, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of the Agreement is for five (5) years commencing on the date (a) Lessee begins construction of Lessee's Facilities on the Premises or (b) twelve (12) months from the last date of execution by a party to the Lease Agreement, as reflected on the signature page, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date, with FOUR (4) successive five (5) year options to renew.
3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR.

LESSEE:

CITY OF LODI, a municipal corporation

MetroPCS California LLC, a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: COREY A. LINQUIST

Title: _____

Title: VICE PRESIDENT & GENERAL MANAGER

Date: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

State of California

County of San Joaquin__

On _____ before me, _____, Notary Public, personally appeared _____, 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 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 _____ that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California

County of SACRAMENTO

On May____, 2012 before me, _____, Notary Public, personally appeared **COREY A. LINQUIST**, 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 is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

RESOLUTION NO. 2012-73

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE LEASE
AGREEMENT WITH METROPCS CALIFORNIA FOR
114 NORTH MAIN STREET

=====

WHEREAS, MetroPCS California has requested a lease of City property located at 114 North Main Street for the purpose of installing communication equipment; and

WHEREAS, MetroPCS California will be paying \$1,500 a month for rent, with a 3% escalator every year; and

WHEREAS, the term of the lease agreement is five years, commencing on the date MetroPCS begins construction of their facilities, and contains the option to extend for four additional five-year terms.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a lease agreement with MetroPCS California for 114 North Main Street for the purpose of installing communication equipment.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-73 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS - Hansen, Johnson, Katzakian, Nakanishi,
and Mayor Mounce

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None


RANDI JOHL
City Clerk