

TO: James L. App, City Manager
FROM: Jim Throop, Administrative Director
SUBJECT: Easement Agreement – T-Mobile West, LLC
DATE: April 21, 2015

NEEDS: For the City Council to consider approving a Utility Easement Agreement with T-Mobile West, LLC for an easement on City property adjacent to the City Landfill.

FACTS:

1. New Cingular Wireless PCS, LLC (“AT&T”) leases a site at the City Landfill to house wireless telecommunications equipment. T-Mobile West, LLC is a subtenant of AT&T and has co-located equipment on the leased premises.
2. T-Mobile notified the City that it desired to acquire a non-exclusive three-foot wide utility easement on vacant City property adjacent to the Landfill that would connect to its telecommunications on the leased premises. This easement is the same easement as was requested by AT&T.
3. The term of easement is co-terminous with the term of the AT&T lease which, if the options to extend are exercised, would remain in effect until 2026.
4. The grant of easement will not interfere with Landfill operations.
5. T-Mobile has agreed to pay the City a one-time fee of \$10,000 for the easement.

ANALYSIS &

CONCLUSION: The easement will allow T-Mobile to have access to electric, telephone and fuel sources to connect to its telecommunications facilities on the leased premises. The easement will not interfere with the operations at the Landfill.

POLICY

REFERENCE: Economic Strategy; Wired Communities.

FISCAL IMPACT: No costs to the City are anticipated with the grant of the Utility Easement Agreement. T-Mobile will pay the City a one-time fee of \$10,000 for the easement.

OPTIONS:

- a. Adopt Resolution No. 15-xx approving and authorizing the execution of the Utility Easement Agreement with T-Mobile West, LLC.
- b. Amend, modify, or reject the above option.

RESOLUTION NO. 15-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING A UTILITY EASEMENT AGREEMENT BETWEEN THE CITY AND T-MOBILE WEST
LLC, A DELAWARE LIMITED LIABILITY COMPANY
(Cell Site # SVO0536A)

WHEREAS, the City has leased certain real property the ("Leased Premises") located at the Paso Robles landfill at 9000 Highway 46 to New Cingular Wireless PCS, LLC, a Delaware limited liability company (hereinafter referred to as "ATT") pursuant to a Lease and Wireless Telecommunications Agreement, dated as of September 1, 2011 (the "Lease"), for the purpose of installing, operating and maintaining a communications facility and other improvements (collectively, the "Communication Facility"); and

WHEREAS, T-Mobile West, LLC, a Delaware limited liability company ("T-Mobile") is a subtenant of ATT and has co-located equipment on the Leased Premises; and

WHEREAS, the Leased Premises are part of an active municipal landfill being operated by a third-party operator (the "Landfill Operator") pursuant to an agreement with the City, and landfill operations, including closure and post-closure activities, are subject to federal and state law and regulations; and

WHEREAS, the City also owns certain real property located adjacent to the Leased Premises (APN 015-042-006) (the "Adjacent Property"); and

WHEREAS, in connection with its operation of the Communication Facility on the Leased Premises, T-Mobile desires to obtain a non-exclusive, approximately three-foot wide easement across a portion of the Adjacent Property ("Easement Area") to secure utility rights under, across and through the Adjacent Property from the electric, telephone and fuel sources on the Adjacent Property to the Communication Facility located on the Leased Premises; and

WHEREAS, staff, in cooperation with T-Mobile and Landfill Operator, has prepared a Utility Easement Agreement (the "Utility Easement Agreement") to establish certain easements under, across and through the Easement Area for the benefit of T-Mobile's use of the Leased Premises and to provide for certain rights and obligations with respect to the construction, installation and operation of certain improvements within the Easement Area;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. The City Council approves the Utility Easement Agreement by and between the City and T-Mobile West LLC, a Delaware limited liability company, in substantially the form attached hereto as Exhibit "A" and directs the City Manager to execute said Agreement on behalf of the City, subject to any minor, technical or clarifying changes as may be approved by the City Attorney. The City Manager is further authorized and directed to execute such other documents and take all necessary actions to implement the purpose and intent of this Resolution and to carry out the obligations of the City under the Utility Easement Agreement.

PASSED AND ADOPTED by the City Council of the City of El Paso De Robles on this 21st day of April, 2015 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

APN: 015-042-006

(Space Above This Line For Recorder's Use Only)

Cell Site #:SVO0536A
Cell Site Name: LA536 CELL ONE WHITNEY
Fixed Asset Number:
State: California
County: San Luis Obispo

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT ("**Agreement**") is entered into as of the last of the signature dates below ("**Effective Date**"), by and between T-Mobile West LLC, a Delaware limited liability company (hereafter referred to as "**Grantee**"), and the City of El Paso de Robles, a California municipal corporation, (hereafter referred to as "**Grantor**"). Grantor and Grantee are each sometimes referred to herein as a "**Party**" and, collectively, as the "**Parties.**"

RECITALS

A. Grantor and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("**AT&T**") entered into that certain Lease and Wireless Telecommunications Agreement, dated as of September 1, 2011 (the "**AT&T Lease**"), for the purpose of installing, operating and maintaining a communications facility and other improvements (collectively, the "**AT&T Communication Facility**") on a portion (the "**Leased Premises**") of certain real property owned by Grantor (the "**Adjacent Property**"). The Adjacent Property is legally described, and the Leased Premises are more particularly described or depicted in **Exhibit A**, attached hereto and incorporated herein by reference.

B. In addition, Grantor owns that certain real property located in the City of El Paso de Robles, County of San Luis Obispo, State of California, and legally described in **Exhibit B**, attached hereto and incorporated herein by this reference ("**Grantor Property**"). The Grantor Property and the Adjacent Property are adjacent parcels of real property.

C. Grantor acknowledges that Grantee has collocated its own telecommunications equipment ("**Grantee's Communication Facility**") within the Leased Premises area on the Adjacent Property as a subtenant of AT&T pursuant to that certain Site Acknowledgment dated January 31, 2002, as subsequently amended (collectively the "**Grantee's Sublease**").

D. Grantee acknowledges that the Adjacent Property is part of an active municipal landfill (the "**Landfill**") being operated by a third-party firm ("**Landfill Operator**") pursuant to an agreement with Grantor. Landfill operations, including closure and post-closure activities, are subject to federal and state laws and regulations.

E. In connection with its operation of Grantee's Communication Facility on the Leased Premises, Grantee desires to secure utility rights under, across and through a portion of the Grantor Property from the Grantor Property's electric, telephone and fuel sources to Grantee's Communication Facility located on the Leased Premises.

F. Subject to the terms and conditions set forth in this Agreement, Grantor agrees to provide Grantee with a non-exclusive utilities easement under, across and through a portion of the Grantor Property and ingress and egress over the Grantor Property in connection with Grantee's use, operation and maintenance of the Grantee's Communication Facility on the Leased Premises.

G. Grantor and Grantee now desire to enter into this Agreement to establish certain easements under, across and through the Grantor Property for the benefit of Grantee's use of the Leased Premises and to provide for certain rights and obligations with respect to the construction, installation and operation of certain improvements within the Easement (as defined in Section 2., below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

AGREEMENTS

1. **Incorporation of Recitals.** Grantor and Grantee agree that the Recitals above are true and correct and are hereby incorporated by this reference into this Agreement.

2. **Grant and Description of Non-Exclusive Easement.** Subject to the terms set forth in this Agreement, Grantor grants to Grantee, its successors and assigns, and each of their employees, agents and contractors, (collectively, "**Grantee Parties**") a non-exclusive three-foot (3') wide easement, legally described and generally depicted on **Exhibit C**, attached hereto and incorporated herein by reference (the "**Easement**") from Grantor Property's electric, telephone and fuel sources, under, across and through a portion of the Grantor Property for the installation, construction, maintenance, operation, repair, replacement and upgrade of all utilities (collectively, "**Grantee Utility Facilities**") deemed necessary or advisable by Grantee in connection with Grantee's operation of Grantee's Communication Facility on the Leased Premises, together with the right to temporarily access and use such additional portions of the Grantor Property in reasonable proximity to the Grantee Utility Facilities on the Grantor Property during the time of, and as may reasonably be necessary for, the construction, installation, repair, maintenance and removal of such Grantee Utility Facilities. During the Term (as defined in Section 4., below) of this Agreement, Grantor shall not use nor permit its employees, agents, contractors or other tenants, licensees or grantees (collectively, the "**Grantor Parties**") to use the Grantor Property in any manner which materially and adversely interferes with Grantee's use of the Easement pursuant to the terms and conditions set forth herein, including, without limitation, the construction of any improvements in, over or upon any portion of the Easement.

3. **Incidental Access Rights.** The Easement herein granted includes a right of access to allow Grantee Parties and each of them, and the servicing utility company to install, remove, replace, maintain, and operate the Grantee Utility Facilities. In exercising these rights, Grantee must use reasonable care and may not unreasonably increase the burden on the Grantor Property or make any material changes not herein specified. Grantee shall, after the initial installation of the Grantee Utility Facilities and after every repair of said Grantee Utility Facilities, restore any pavement disturbed, if any, by Grantee's use to its condition existing immediately prior to Grantee's commencement of such installation or repair, as the case may be.

4. **Consideration.** As full and complete consideration of Grantor's grant of the Easement to Grantee, within forty-five (45) days of the Effective Date, Grantee shall make a one-time payment in the amount set forth in **Exhibit D** ("**Consideration**"). In no event will Grantee commence construction of the initial installation of the Grantee Utility Facilities until the Consideration set forth in Exhibit D has been received by Grantor. Such payment shall be made by check, payable to the City of El Paso de Robles, and shall be sent to the attention of the Administrative Services Department to the address specified in Section 21, **Notices**. Neither Party shall be entitled to record this Agreement unless and until Grantee has paid Grantor the Consideration whereafter Grantee shall have the right to record this Easement in accordance herewith.

5. **Term and Termination.** The term of this Agreement ("**Term**") shall commence on the Effective Date and shall automatically expire upon the complete removal of Grantee's Communication Facility or Grantee's similar improvement from the Leased Premises following the expiration or earlier termination of Grantee's Sublease. This Agreement may be terminated by Grantee at any time by written notice to Grantor and delivery of a recordable quitclaim deed to Grantor relinquishing, releasing and remising Grantee's right, title and interest in and to the Grantor Property, including this Agreement. This Agreement may be terminated by Grantor if, after receipt of written notice of a breach by Grantee under this Agreement, Grantee fails to cure within the applicable cure period, or commence to cure and diligently prosecute to completion, any such breach. Notwithstanding the foregoing, if Grantor notifies Grantee in writing that a particular failure creates imminent and serious threat to persons or property, Grantor shall have the right, but not the obligation, to undertake such curative measures on behalf of Grantee as Grantor reasonably deems necessary to eliminate such imminent and serious threat, and Grantee shall reimburse Grantor for the actual and reasonable cost of such curative measures within thirty (30) days of receipt of Grantor's invoice accompanied by reasonable substantiation of the costs so incurred.

6. **Restoration.** Within thirty (30) days after the removal of Grantee's Communication Facility from the Leased Premises, Grantee, or its successors and assigns, shall restore any above-ground improvements on the Grantor Property damaged by Grantee's use of the Easement to substantially the same condition that existed as of the Effective Date, reasonable wear and tear and damage due to casualty not caused by the Grantee Parties excepted.

7. **Survival.** No termination of the Easement and this Agreement shall release Grantee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions, or events occurring on and after the Effective Date and before the effective date of this Agreement's termination.

8. **Use and Maintenance.** Grantee shall not be obligated to perform any improvements, maintenance or repair work on the Grantor Property except for damage thereto directly caused by the use of the Grantor Property by Grantee Parties or any of them. If Grantee Parties, or any of them, causes any such damage, Grantee shall promptly repair same within thirty (30) days of receipt of Grantor's written request, provided that if the nature of the damage directly caused by Grantee Parties, or any of them, is of such a nature that it is not feasible to complete the repair, provided that Grantee commences to repair such damage within thirty (30) days of Grantee's receipt of Grantor's written request and diligently prosecutes such repair to completion. In addition, Grantee shall maintain at its sole cost and expense the Easement in good condition and repair, except for such maintenance and repair occasioned by the negligence or intentional acts or omissions of Grantor Parties or any of them (including, but not limited to the Landfill Operator and its employees, agents and contractors). Grantee shall also maintain, at its sole cost and expense, the Grantee Utility Facilities except for such maintenance and repair occasioned by the negligence or intentional acts or omissions of Grantor Parties, or any of them (including, but not limited

to the Landfill Operator and its employees, agents and contractors). The Grantee Utility Facilities shall be maintained in accordance with applicable requirements of the California Public Utilities Commission..

9. Compliance with Laws. In granting and receiving the rights herein granted, Grantor and Grantee shall: (i) comply with any and all local, state and federal laws, regulations, ordinances and other governmental restrictions relating to Grantor's ownership and use of the Grantor Property and Grantee's use of the Easement, respectively; and (ii) take reasonable steps to ensure the safety and security of all persons and property in the Easement in connection with Grantee's and Grantor's use of the Easement and the rights granted herein.

10. Landfill Operations. Grantee hereby acknowledges that the Landfill operates in close proximity to the Easement and that the Landfill is subject to state and federal laws and regulations.

10.1 Grantee, for itself and its successors and assigns, hereby agrees that Grantee's use and maintenance of the Easement, or the Grantee Utility Facilities, shall not materially and adversely interfere with nor materially and adversely impact the Landfill's operations, including closure and post-closure activities, or the Landfill Operator's ability to comply with applicable state and federal laws and regulations. As of the Effective Date, Grantor represents and warrants that if Grantor properly installs and uses the Easement with the Grantee Utilities Facilities shown on Exhibit B, that such installation and use shall not materially and adversely interfere with nor materially and adversely affect the Landfill Operations, including closure and post-closure activities or the Landfill Operator's ability to comply with applicable state and federal laws and regulations, as they exist on the Effective Date.

10.2 Grantee shall provide notice to the Landfill operator ten (10) days before beginning construction activities in, under, within or along the Easement in connection with the installation, use, maintenance or repair of the Easement or the Grantee Utility Facilities.

11. Indemnity. Grantee, for itself and each of the Grantee Parties, hereby agrees to protect, defend, and does hereby indemnify and hold Grantor Parties, and its officials, employees, agents, representatives and volunteers harmless from any and all injury, loss, demands, liability, claims, actions and damages to any person or property (including reasonable attorneys' fees) arising directly out of their use or maintenance of the Easement or Grantee Utility Facilities, or the negligent or intentional acts or omission of the Grantee Parties or any of them in and upon the Easement, except to the extent attributable to the negligence or willful misconduct of Grantor Parties or any of them. Grantor agrees to indemnify, defend and hold Grantee Parties, and each of them, harmless from and against any and all injury, loss, damage, or liability, costs or expenses (including reasonable attorneys' fees) arising directly from the actions or failure to act of Grantor Parties, or any of them, except to the extent attributable to the negligent or intentional act or omission of Grantee Parties, or any of them.

12. Insurance. Prior to Grantee's exercise of any rights or obligations under this Agreement, Grantee shall furnish Certificates of Insurance evidencing to Grantor that Grantee has secured all insurance required under this section. Grantee may satisfy these requirements by obtaining the appropriate endorsement to any master policy of liability insurance Grantee may maintain.

12.1 **Types of Insurance Required.** As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, Grantee shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Grantee agrees to amend, supplement or endorse the policies to do so.

(a) **Commercial General Liability.** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 0001, with limits of \$1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be \$4,000,000, throughout the term of this Agreement and until this Agreement is terminated pursuant to the provisions of Section 5. Defense shall be paid in addition to the limits.

The Commercial General Liability Insurance policies required pursuant to this subsection 12.1 shall contain no endorsements or provisions limiting coverage for (i) contractual liability or (ii) cross liability for claims or suits by one insured against another.

(b) **Automobile Liability Insurance.** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with limits of \$1,000,000 each accident.

(c) **Workers’ Compensation.** Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with limits of \$1,000,000 per accident for bodily injury and disease.

Notwithstanding the foregoing, Grantee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Grantee elects to self-insure its obligations under this Agreement to include Grantor as an additional insured, the following conditions apply:

(i) Grantor shall promptly and no later than thirty (30) days after notice thereof provide Grantee with written notice of any claim, demand, lawsuit or the like for which Grantor seeks coverage pursuant to this Section and provide Grantee with copies of any demands, notices, summonses or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Grantor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Grantee; and

(iii) Grantor shall reasonably cooperate with Grantee in the defense of the claim, demand, lawsuit, or the like.

12.2 **Endorsements.** Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that does not meet the Insurance Requirements set forth herein.

(a) The policy or policies of insurance required by Section 12.1(a) Commercial General Liability Insurance shall provide the following:

(i) **Additional Insureds.** Grantor, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. However, should Grantee’s insurance policy provide for Additional Insured status to Grantor within the terms and conditions of the CGL Policy Form, no endorsement shall be required. Grantee agrees to provide a copy of such policy wording to the Grantor.

Additional Insured Endorsements shall not (1) be restricted to “ongoing operations”; (2) exclude “contractual liability”; (3) restrict coverage to “sole” liability of Grantee; or (4) contain any other exclusions contrary to the Agreement.

(ii) **Cancellation.** Required insurance policies shall not be cancelled, or non-renewed and not replaced until a thirty (30) day written notice of cancellation has been mailed to Grantor, except ten (10) days shall be allowed for non-payment of a premium.

12.3 **Primary and Non-Contributing Insurance.** All required insurance coverages shall be primary with respect to claims alleging the negligence of the Grantee Parties and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

12.4 **Waiver of Subrogation.** Required insurance coverages shall not prohibit Grantee from waiving the right of subrogation prior to a loss. Grantee shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

12.5 **Self-Insured Retention.** Any self-insured retention in required coverage must be declared in writing by the Grantee and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

12.6 **Evidence of Insurance.** Grantee, prior to commencing any work or operations authorized hereunder, shall provide to Grantor Certificates of Insurance evidencing the insurance required to be carried by it hereunder. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to or within two (2) days after the expiration of any such policy, evidence of insurance shall be filed with the Grantor.

12.7 **Failure to Maintain Coverage.** Grantee agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to Grantor.

12.8 **Acceptability of Insurers.** Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and eligible to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Nothing in this Section 12 shall prevent Grantee from carrying insurance of the kind required of Grantee under a blanket insurance policy or policies which cover other properties owned or operated by Grantee. Grantee shall provide Grantor with certificates of insurance naming Grantor, its officials, officers, employees, agents, and volunteers as additional insureds and setting forth the required coverage.

12.9 **Insurance for Subcontractors.** Grantee shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with Grantee's standard Subcontractor insurance requirements, including adding Grantee and City as an Additional Insured to the Grantee's subcontractors' policies.

13. **Modification.** This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement may not be modified in any respect or rescinded, except as expressly provided for herein, in whole or in part, except by an instrument in writing, duly executed and acknowledged by both Parties, their successors or assigns.

14. **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent

jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. Litigation. The prevailing party in any action, court proceeding, or arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party. This Agreement is governed by the laws of the State of California and venue for any disputes between the Parties hereto shall be in the County of San Luis Obispo, State of California, unless otherwise stipulated in a writing signed by all Parties to this Agreement.

16. Assignment; Sublease. Grantee may assign this Agreement or lease/license the Easement and its rights herein, in whole or in part, only in connection with a permitted assignment of the Grantee's Sublease.

17. Environmental.

(a) Indemnity by Grantee. Grantee agrees, from and after the Effective Date, to defend, indemnify, protect, and hold harmless Grantor Parties, and each of them, from, regarding, and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined in Section 17(c)(i), below), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined in Section 17(c)(ii), below), and reasonable costs of any kind or nature whatsoever, together with reasonable fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting directly from or in direct connection with the actual generation, storage, handling, transportation, use, presence, placement, migration, and/or release of Hazardous Materials (as defined in Section 17(c)(iii), below) to the extent caused by Grantee's use or occupancy of the Easement by Grantee, at, on, in, beneath, or from the Easement and occurring during the Term (sometimes herein collectively referred to as "**Contamination**"), except to the extent: (i) caused by Grantor Parties or any of them, during Grantor's ownership of the Easement prior to the Effective Date, or (ii) caused by Grantor Parties or any of them during the Term. Grantee's defense, indemnification, protection, and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim, or demand regarding the Contamination, at Grantee's sole cost.

(b) Indemnity by Grantor. Grantor agrees, from and after the Effective Date, to defend, indemnify, protect, and hold harmless Grantee Parties and each of them, from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions, claims, losses, damages, fines, penalties, member expenses, Environmental Response Costs, and reasonable costs of any kind or nature whatsoever, together with reasonable fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials, at, on, in, beneath, or from the Easement or adjacent properties during Grantor's ownership of the Easement prior to the Effective Date or caused by Grantor Parties or any of them, during the Term, (sometimes herein collectively referred to as "**Other Contamination**"). Grantor's defense, indemnification, protection, and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim, or demand regarding the Other Contamination, at Grantor's sole cost. In any legal action, claim, or investigation in which Grantor asserts that it does not have an obligation to defend or indemnify Grantee

because Grantor did not own the Easement at the time contamination occurred, the burden of proof shall be on Grantor to demonstrate that the contamination occurred during the time Grantor did not own the Easement.

(c) Definitions.

(i) As used in this Agreement, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state, or federal governmental or private party claims, including any claims by Grantee.

(ii) As used in this Agreement, the term "**Environmental Response Costs**" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

(iii) As used in this Agreement, the term "**Hazardous Materials**" means any substance, material, or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. § 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. § 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

(c) Materiality. The Parties acknowledge and agree that the defense, indemnification, protection, and hold harmless obligations of each for the benefit of the other set forth in this Agreement are a material element of the consideration to each Party for the performance of their obligations under this Agreement, and that the Parties would not have entered into this Agreement unless each Party's obligations were as provided for herein.

(d) Grantor Environmental Representation. Grantor represents and warrants that, to the best of its knowledge (i) the Easement, as of the Effective Date, was free of Hazardous Materials, including asbestos-containing materials and lead paint, and (ii) the Easement has not been subject to any Contamination or hazardous conditions resulting in any environmental investigations, inquiry or remediation by any county, state or federal regulatory agency with jurisdiction over such matters.

18. Warranties. Grantor represents, warrants and agrees that: (i) Grantor solely owns the Grantor Property in fee simple; (ii) the Grantor Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements not of record, which would adversely affect the use of the Easement by Grantee under this Agreement; (iii) Grantor's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Grantor; and (iv) if the Grantor Property becomes encumbered by a deed to secure a debt, mortgage or other security interest, Grantor will provide to

Grantee a mutually agreeable subordination, non-disturbance and attornment agreement executed by Grantor and the holder of such security interest.

19. Binding Effect. The benefits and obligations of this Agreement shall be a covenant running with the land, and shall inure to and be binding upon the successor, assigns and heirs of the Parties.

20. Recording of Agreement. Grantee shall have the right to record, at Grantee's sole cost and expense, this Agreement following the date that Grantee pays the Consideration to Grantor. To preserve the privacy of the Consideration, Grantee shall have the right to redact the amount of the Consideration set forth in **Exhibit D** prior to recording; however, such redaction shall in no manner alter or eliminate the amount of the Consideration due to Grantor.

21. Notices. All notices, requests or demands hereunder will be given by first-class, certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the Parties as follows:

GRANTOR: City of Paso Robles
Attn: Director of Administrative Services
821 Pine Street, Suite A
Paso Robles, CA 93446

With a copy to: Best Best & Krieger LLP
Attn: Iris Yang, City Attorney
500 Capital Mall, Suite 1700
Sacramento, CA 95814

GRANTEE: T-Mobile West_
920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance
Site No. SV00536A

LANDFILL
OPERATOR: Pacific Waste Services, Inc.
Attn: Jim Wyse
12925 Alcosta Blvd., Suite 1
San Ramon, CA 94583

Grantor or Grantee may from time to time designate any other address for this purpose by delivering at least thirty (30) days' prior written notice to the other party.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of Effective Date.

"GRANTOR"	"GRANTEE"
City of El Paso de Robles, a California municipal corporation	T-Mobile West, LLC a Delaware limited liability company
By: _____	By: _____
Name: _____	Name: _____
Its: _____	Its: _____
Date: _____, 2015	Date: _____, 2015

Attest:

By: _____
Dennis Fansler
City Clerk

Approved as to Form:

By: _____
Iris P. Yang
City Attorney

GRANTEE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

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 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 of Notary Public

GRANTOR ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

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 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 of Notary Public

EXHIBIT A

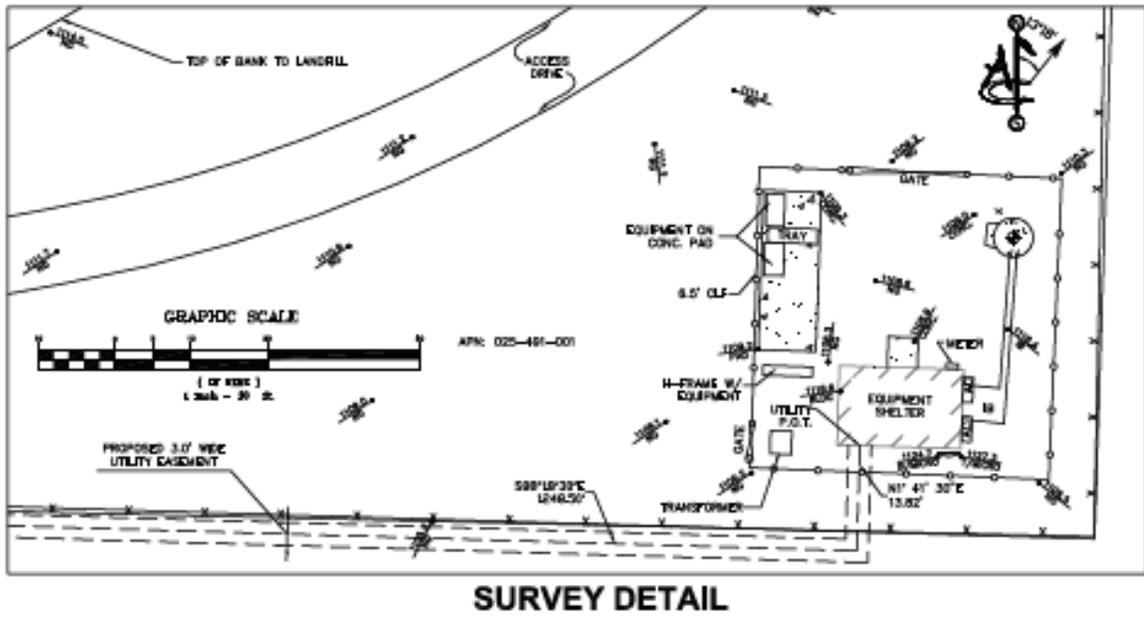
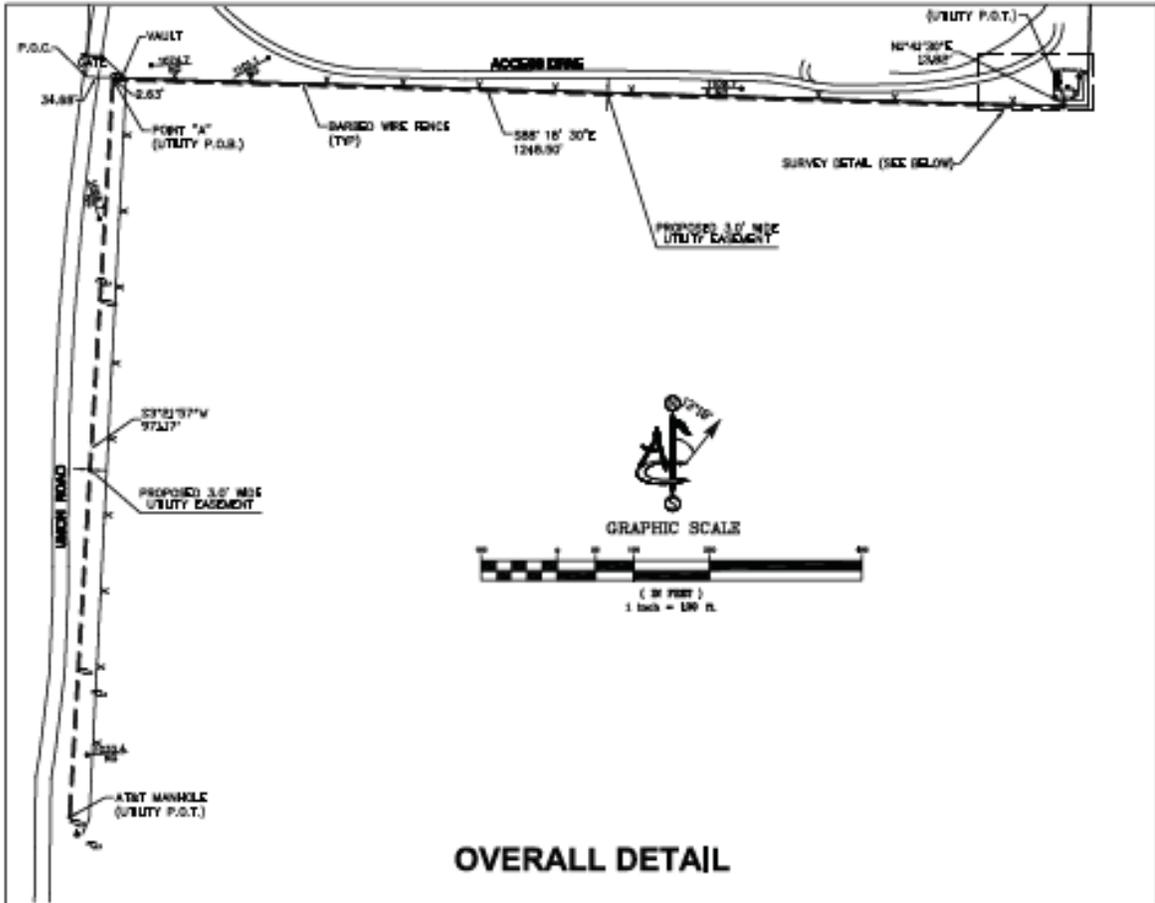
Legal Description of the Adjacent Property & Depiction of Leased Premises
Page 1 of 2

The “Adjacent Property” is legally described as follows:

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, IN TOWNSHIP 26 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEYOR GENERAL, EXCEPTING THEREFROM SUCH INTEREST AS WAS CONVEYED TO THE COUNTY OF SAN LUIS OBISPO, BY DEED DATED FEBRUARY 15, 1906 AND RECORDED APRIL 13, 1906 IN BOOK 69, PAGE 512 OF DEEDS.

The “Leased Premises” are a portion of the Adjacent Property and are described and/or depicted as follows:

[One (1) Page Depiction of the Leased Premises Suitable for Recording in San Luis Obispo County Appears on Following Page]



Leased Premises



EXHIBIT B

Legal Description of the Grantor Property

The land described herein is situated in the State of California, County of San Luis Obispo, City of Paso Robles, and is described as follows:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 26 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR GENERAL, LYING NORTH OF THE STATE HIGHWAY AS IT EXISTED DECEMBER 20, 1924.

EXCEPTING THEREFROM SUCH INTEREST AS WAS CONVEYED TO THE COUNTY OF SAN LUIS OBISPO, BY DEED DATED FEBRUARY 15, 1906 AND RECORDED APRIL 13, 1906 IN BOOK 69, PAGE 512 OF DEEDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JANUARY 3, 1952 IN BOOK 640, PAGE 290 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MAY 27, 1952 IN BOOK 659, PAGE 245 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM 60 FEET OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 26 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, EXTENDING NORTHERLY FROM RIGHT OF WAY LINE OF STATE HIGHWAY 46 TO THE SOUTHERLY LINE OF SECTION 13, ABUTTING AND CONTIGUOUS TO THE SOUTHERLY PROPERTY LINE OF THE BERTONI PROPERTY AS RECORDED IN BOOK 1477, PAGE 367 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION LYING SOUTH OF THE SOUTH LINE OF STATE HIGHWAY 46 AS CONVEYED TO ARNOLD WILLIAM KLINTWORTH, ET AL., IN THE DEED RECORDED MARCH 26, 1998, AS INSTRUMENT NO. 1998-016659 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 21, 2009, AS DOCUMENT NO. 2009019843 OF OFFICIAL RECORDS

EXHIBIT C

Legal Description of Easement
Page 1 of 3

The "Easement" is legally described as follows:

The land described herein is situated in the State of California, County of San Luis Obispo, City of Paso Robles, and is described as follows:

A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, AND THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 26 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, BEING 1.5 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE SOUTHWEST CORNER OF SAID WEST HALF OF THE SOUTHWEST QUARTER; THENCE EASTERLY ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 34.68 FEET; THENCE DEPARTING SAID SOUTH LINE SOUTH 03°21'57" WEST, A DISTANCE OF 2.63 FEET TO A POINT TO BE HEREAFTER KNOWN AS POINT "A" AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 03°21'57" WEST, A DISTANCE OF 971.17 FEET TO THE POINT OF TERMINUS.

TOGETHER WITH:

BEGINNING AT THE AFOREMENTIONED POINT "A", THENCE SOUTH 88°18'30" EAST, A DISTANCE OF 1248.50 FEET; THENCE NORTH 01°41'30" EAST, A DISTANCE OF 13.82 FEET TO THE POINT OF TERMINUS.

The "Easement" is described and/or depicted as follows:

[Two (2) Page Depiction of the "Easement" Suitable for Recording in San Luis Obispo County Appears on Following Pages]

EXHIBIT D

CONSIDERATION

One-time Payment in the amount of Ten Thousand and No/100 Dollars (\$10,000.00).