

**STAFF REPORT NO. 147-10**

**TO:** Mayor and City Council  
**FROM:** Eric J. Holmes, City Manager 

**DATE:** 12/06/2010

**Subject:** Lease Agreement between New Cingular Wireless PCS, LLC (dba AT&T Wireless Services) and City of Vancouver.

**Objective:** To approve a lease agreement that will allow New Cingular Wireless PCS, LLC (dba AT&T Wireless Services) to continue to maintain a Radio Communications Tower in a fenced area on the alley right-of-way off East 35th Street, east of "Z" Street.

**Present Situation:** The City of Vancouver and New Cingular Wireless entered into a Street Use Permit on March 29, 1996, for installation and maintenance of a 75-foot high monopole radio communications tower. This Street Use Permit is scheduled to terminate on March 28, 2011. At the request of AT&T to renew the agreement, the City of Vancouver internal staff agreed that a Lease Agreement with a Long Term Street Use Permit attached would be the appropriate documentation for this transaction.

**Advantage(s):**

1. Maintains additional cellular radio frequency availability in the Vancouver area.
2. Allows for a revenue source throughout the term of the agreement.

**Disadvantage(s):** None known.

**Budget Impact:** Revenue over a five-year period in the amount of \$143,080.

**Action Requested:** On December 6, 2010, authorize the City Manager or his designee to execute a Lease Agreement with New Cingular Wireless PCS, LLC (dba AT&T Wireless) for the continued maintenance of a 75-foot high monopole radio communications tower.

Attachment: Lease Agreement

**Cell Site No: PT26 / ST JOHNS**

**FA No: 10094177**

**Site Address: Off East 35<sup>th</sup> Street East of "Z" Street, Vancouver, WA 98663**

#### LEASE AGREEMENT

This lease agreement is a revocable lease agreement issued to New Cingular Wireless PCS, LLC, a Delaware limited liability company, (successor in interest to Interstate Mobilphone Company, dba AT&T Wireless Services, a Washington general partnership) ("Lessee") whereby the lessee may maintain a Radio Communications Tower in the cellular frequency bands and related facilities, in a fenced area on the alley right-of-way, off East 35<sup>th</sup> Street east of "Z" Street, as shown on the attached legal description (Exhibit "A"), deed of dedication map (Exhibit "B"), map (Exhibit "C") and in coordination with Long Term Right of Way Permit (Exhibit "D") in the City of Vancouver.

The parties agree to the following:

1. Lessee is hereby granted a revocable lease to maintain a 75-foot high monopole radio communications tower in the cellular frequency bands, a 12-foot by 28-foot equipment shelter and related facilities in a fenced area in the subject right-of-way, to the extent described herein. All other applicable requirements of Conditional Use Permit for Cellular Monopole (#V95CU028) and the City of Vancouver Zoning Ordinance shall apply (VMC Chapter 20.91, Special Use Provisions).
2. This instrument confers no vested rights to lessee.
3. This lease and long term Right of Way permit is revocable at the will of the City. If the right-of-way occupied by lessee is at any future time required for street or utility use or any other reason required by the City, lessee shall remove the monopole tower, equipment shelter and all other related appurtenances at no cost to the City, its successors and assigns. Such removal shall be completed within one year of written notice by City to the lessee to do so. The lessee may terminate this lease by giving the City one-year notice.
4. This long term right-of-way use permit and lease is issued to the lessee and is non transferable. If the lessee sells this facility during the term of the lease, this permit and lease will be revoked and the lessee will have one year to move this facility from the City right-of-way. The City reserves the right to issue a new long term right-of way permit and lease at a revised rent amount to the new lessee.
5. Lessee shall properly maintain and repair any damage to the tower, equipment shelter, fence and other appurtenances, including the alley pavement, at no

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expense to the City. This shall include prompt removal of any markings or graffiti.

6. Lessee agrees to hold the City, its successors and assigns, harmless from any and all claims which may arise as a result of granting this lease. The lessee shall obtain and maintain a general liability insurance policy naming the City as additional insured. The minimum amount of coverage in this policy shall be \$2,000,000 general aggregate, \$1,000,000 personal injury, and \$1,000,000 each occurrence.
7. Any work within the right-of-way is subject to any building permits or approvals that may be required by the City.
8. This lease is contingent upon lessee obtaining and continuing all necessary permits to operate and maintain the cellular antenna facilities throughout the term of the lease. The lessee shall also be responsible for obtaining and continuing all other governmental and other regulatory agency approvals, including but not limited to, all Federal Communication Commission and Federal Aviation Administration approvals.
9. Rental Agreement: Upon City Council approval of this lease agreement, the lessee agrees to pay the City at the following rate plus leasehold excise taxes with increases as noted in the following table.

Year 1 – March 29, 2011 through March 28, 2012	\$10,200.00
Year 2 – March 29, 2012 through March 28, 2013	\$10,404.00
Year 3 – March 29, 2013 through March 28, 2014	\$10,612.00
Year 4 – March 29, 2014 through March 28, 2015	\$10,824.00
Year 5 – March 29, 2015 through March 28, 2016	\$11,040.00

Current Leasehold Excise Tax rate - 12.84%.

10. Interference. Lessee shall not use the city right-of-way in any way which interferes with the use of the property by City, or lessee or licensees of City, with rights to the property prior in time to lessee's (subject to lessee's rights under this lease, including non-interference). Similarly, City shall not use, nor shall City permit its lessees, licensees, employees, invitees or agents to use, any portion of City's properties in any way which interferes with the operations of lessee. Such interference shall be deemed a material breach by the interfering

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party, who shall, upon notice from the other, be responsible for terminating said interference.

11. Subject to the other terms and conditions contained herein, the term of this agreement is intended to be for a period of five (5) years. Therefore, the commencement date of this agreement shall be March 30, 2011 and the expiration date shall be March 29, 2016.

After expiration of the initial term, Lessee may renew the lease for three (3) subsequent five (5) year terms under same terms and conditions contained herein except rent. Rental rate for each subsequent term shall begin at a rate three percent (3%) higher than the last rental amount paid and will increase 2% annually.

12. All notices, requests, demands and communications 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.

If to Tenant:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: PT26; Cell Site Name: ST JOHNS (WA)  
Fixed Asset No: 10094177  
12555 Cingular Way, Suite 1300  
Alpharetta, GA 30004

With a required copy of the notice sent to the address above to AT&T Legal at:

If sent via certified or registered mail:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
Re: Cell Site #: PT26; Cell Site Name: ST JOHNS (WA)  
Fixed Asset No: 10094177  
P.O. Box 97061  
Redmond, WA 98073-9761

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Or

If sent via nationally recognized overnight courier:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
Re: Cell Site #: PT26; Cell Site Name: ST JOHNS (WA)  
Fixed Asset No: 10094177  
16331 NE 72<sup>nd</sup> Way  
Redmond, WA 98052-7827

And if to City:

City of Vancouver  
P.O. Box 1995  
Vancouver, WA 98668-1995

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF VANCOUVER

New Cingular Wireless PCS, LLC  
a Delaware limited liability company

By: ~~Gerl Roper~~ Mobility Corporation

its authorized officer

Signed: Gerl Roper

By: Gerl Roper

Title: Area Manager, Construction & Engineering - PNW

~~Pat McDonnell, City Manager~~  
ERIC J. HOLMES

Attest:

\_\_\_\_\_  
R. Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

\_\_\_\_\_  
Ted H. Gathe, City Attorney

LEGAL DESCRIPTION FOR AT&T WIRELESS

SR 500/ ST. JOHN

A TRACT OF LAND LYING IN THE N.E. 1/4 OF THE N.E. 1/4 OF SECTION 23, T. 2N., R. 1E., OF THE WILLAMETTE MERIDIAN AND IN LOTS 1 AND 2, BLOCK 3 OF MINNEHAHA PARK ADDITION, BOOK C OF PLATS, PAGE 29, CLARK COUNTY RECORDS IN CLARK COUNTY, WASHINGTON, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD AS SET IN BOOK 37 OF SURVEYS, PAGE 4 CLARK COUNTY RECORDS, AT A POINT 133.37 FEET RIGHT OF HIGHWAY ENGINEERS STATION 144+90.50 AS SHOWN IN WASHINGTON STATE DEPARTMENT OF TRANSPORTATION PLANS FOR STATE ROUTE 500, MILE POST 0.23 TO MILE POST 2.95, JUNCTION STATE ROUTE 5 AT 39TH STREET TO N.E. 66TH AVENUE, DATED JUNE 2, 1978; THENCE NORTH 48°37'37" WEST A DISTANCE OF 44.18 FEET TO A CURB SCREW AT 130.00 FEET RIGHT OF HIGHWAY ENGINEERS STATION 144+50 AS SET IN SAID BOOK 37 OF SURVEYS, PAGE 4,; THENCE NORTH 42°51'05" WEST A DISTANCE OF 107.72 FEET TO A 1/2" IRON ROD AS SET IN SAID BOOK 37 OF SURVEYS, PAGE 4, AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 42°51'05" EAST A DISTANCE OF 89.49 FEET TO THE SOUTH LINE OF SAID LOT 2 BLOCK 3 MINNEHAHA PARK ADDITION; THENCE NORTH 87°58'10" WEST A DISTANCE OF 62.69 FEET ALONG THE SOUTH LINE OF SAID LOT 2 TO THE WEST LINE OF SAID LOT 2; THENCE NORTH 1°36'56" EAST A DISTANCE OF 63.41 FEET ALONG THE WEST LINE OF SAID LOT 2 TO THE TRUE POINT OF BEGINNING.  
CONTAINS 1987.59 SQUARE FEET.

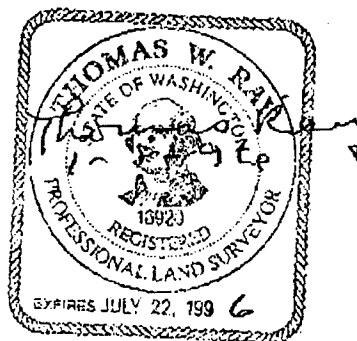
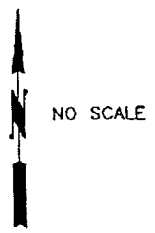
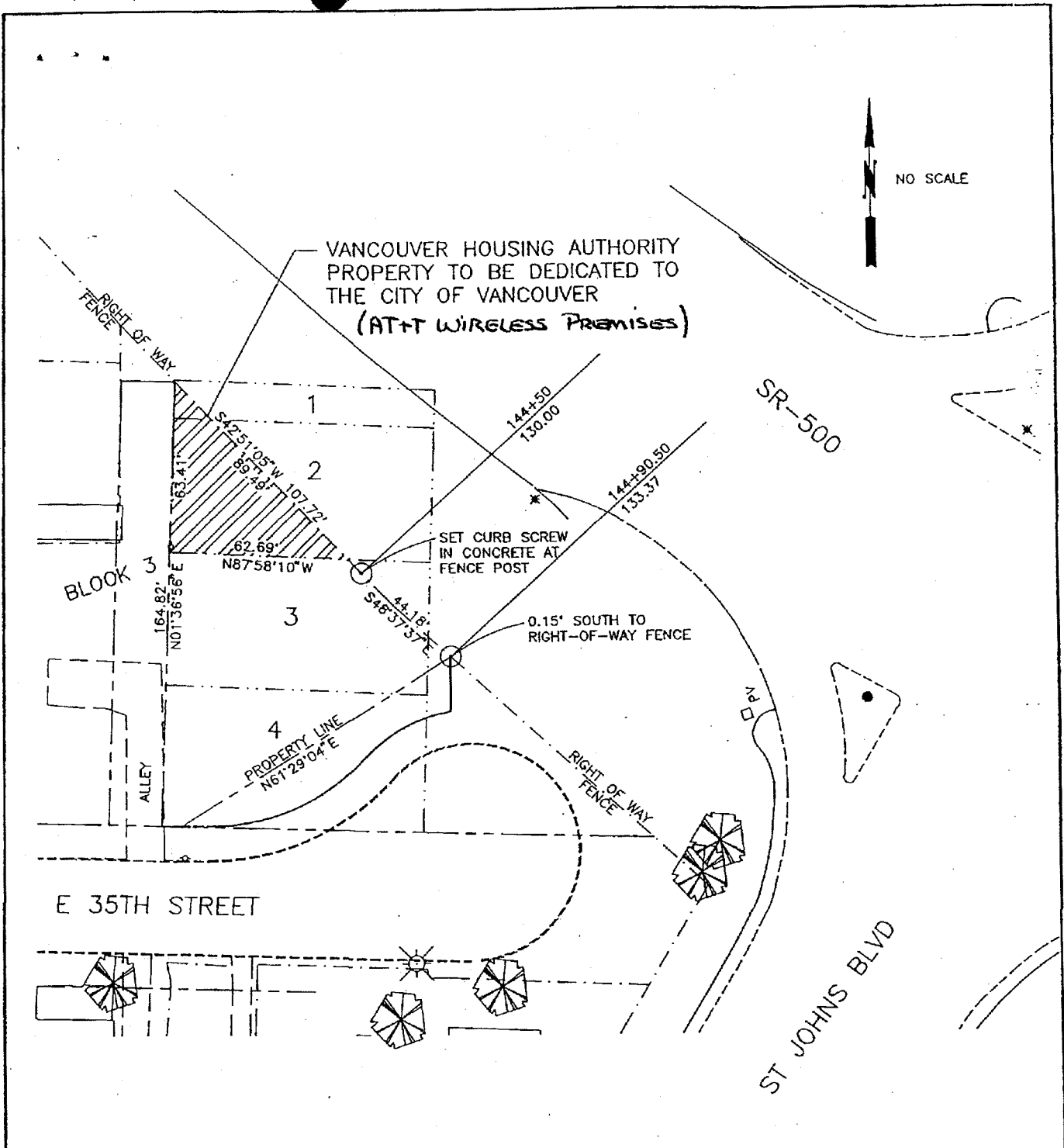


EXHIBIT     A



VANCOUVER HOUSING AUTHORITY  
 PROPERTY TO BE DEDICATED TO  
 THE CITY OF VANCOUVER  
 (AT&T WIRELESS PREMISES)

AT&T Wireless - Premises Map.

EXHIBIT "B"  
 DEED OF DEDICATION MAP



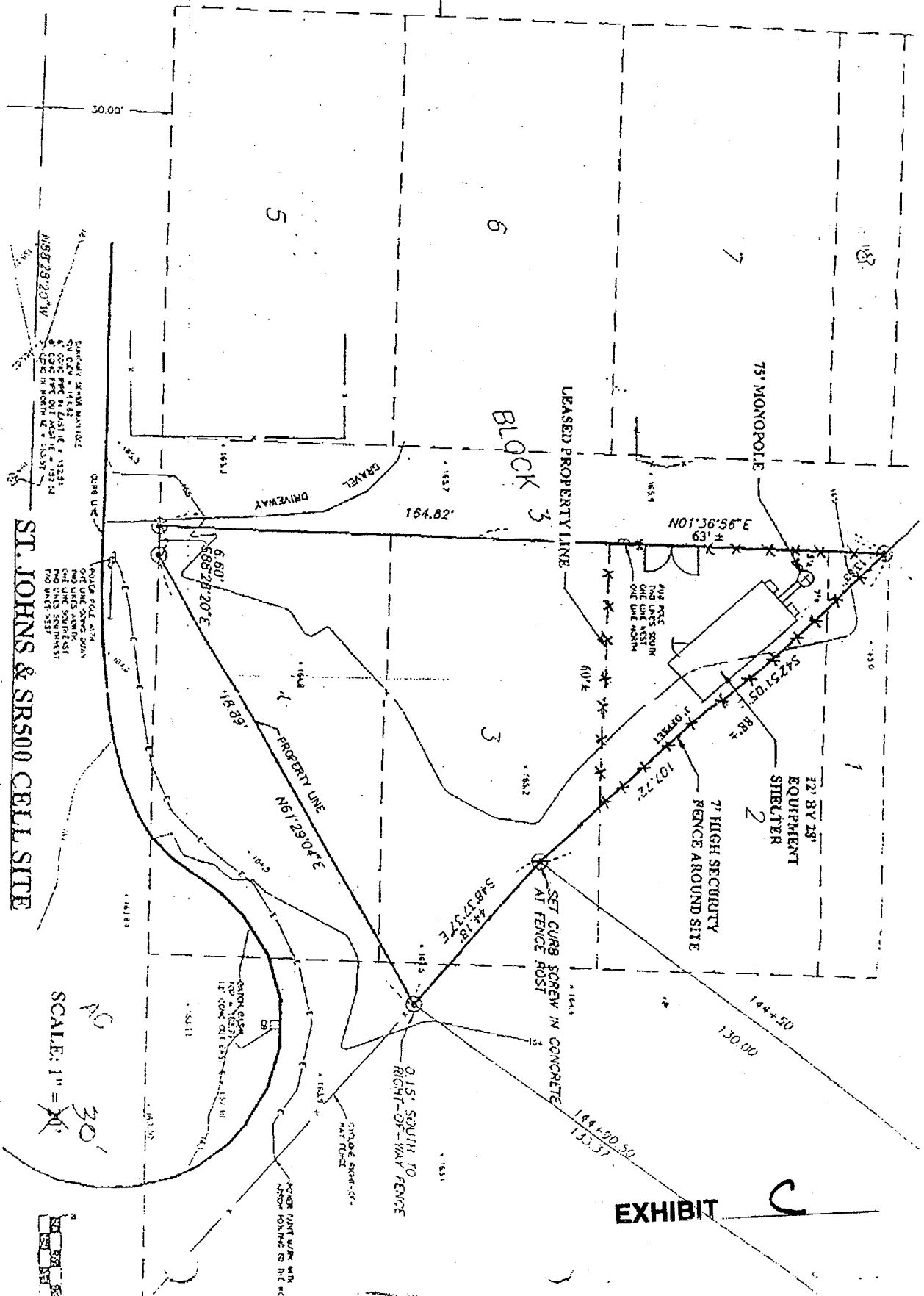
PROPOSED STREET VACATION - E 35TH ST AT ST JOHNS BLVD

City of Vancouver Public Works - Transportation Division

MAP FOR AT&T WIRELESS

501°36'56"W

"Z" STREET



ST. JOHNS & SR500 CELL SITE

SCALE: 1" = 30'

EXHIBIT C



**APPLICATION FOR LONG-TERM  
RIGHT-OF-WAY USE**

Applicant Name: New Cingular Wireless PCS, LLC		
Address: 8832 NORTH SYRACUSE STREET, PORTLAND, OR 97203		
Phone Number: 425-580-7009		
Address of object in the Right-of-Way: off East 35th Street east of "Z" Street, Vancouver, WA		
Purpose:		
<input type="checkbox"/> Fence	<input type="checkbox"/> Bus Shelter	<input type="checkbox"/> Sign
<input type="checkbox"/> Canopy	<input type="checkbox"/> Building/Footing	<input type="checkbox"/> Mailbox
<input type="checkbox"/> Monitoring Well	<input type="checkbox"/> Retaining Wall	<input checked="" type="checkbox"/> Other
Description of other: <u>CELL SITE</u>		
Permit Number: (Assigned by staff when application is turned in. Applicant leaves this area blank.) <u>R2010-038</u>		
Please state any other pertinent information:		
<p>"Permittee is responsible for complying with city code requirements and any applicable state and federal law. Permittee understands that any Long Term Right of Way use permit that authorizes conduct in violation of any city code provision or other applicable law is void, and permittee accepts sole responsibility for any loss, injury, or damage resulting from the issuance of a void permit."</p>		
Signature of Applicant: <u>Aeri Lopez</u>	Date: <u>5/3/10</u>	
<p><i>Please note: If a public works project should require use of this right-of-way, or at such a time that this object becomes a problem, the object or portions of the object shall be removed and relocated by the owner, at the owner's expense. The City of Vancouver assumes no responsibility for the costs associated with loss of use of this area, or removal or relocation of the object.</i></p>		
Approved by: <u>[Signature]</u>	Date: <u>5, 19, 10</u>	