



# TRIUNFO SANITATION DISTRICT

A PUBLIC AGENCY

August 24, 2011

Board of Directors  
Triunfo Sanitation District  
Ventura County, California

## CELL SITE LEASE AGREEMENT

Chairman Paule asked staff to obtain a copy of the Las Virgenes Municipal Water District (LVMWD) standardized communications site lease agreement. A copy of the agreement is attached.

Legal counsel has been provided a copy of the agreement but has not been directed to comment or compare to any existing Triunfo Sanitation District agreements with cell providers.

APPROVED FOR AUGUST 29, 2011 AGENDA

  
\_\_\_\_\_  
Doug Anders—Acting District Manager

Enc.

Item 20-1

## COMMUNICATIONS SITE LEASE AGREEMENT

As of \_\_\_\_\_, 20xx, XXXXXXXXXXXXXXX company, ("Lessee") and Las Virgenes Municipal Water District ("Lessor") agree as follows:

1. **Premises.** Lessor leases to Lessee that portion of Lessor's Property depicted in Exhibit "A", including applicable easements for access and utilities (the "Premises").

2. **Use.** Lessee may use the Premises for lawful activity in connection with mobile/wireless communications services, including without limitation, the transmission and reception of radio communication signals on various frequencies and the construction, maintenance and operation of communications facilities.

3. **Conditions Precedent.** Performance by Lessee is conditioned upon (i) satisfactory results of Tests (as defined in Section 6(a) below), (ii) a good faith determination by Lessee of the suitability of the Premises in its sole discretion, including but not limited to an environmental inspection of Lessor's Property and adjacent property, and (iii) approval and issuance of governmental approvals and permits to enable Lessee to construct and operate mobile/wireless communications facilities on the Premises. Lessor shall cooperate with Lessee in making application for licenses, permits and other approvals required for Lessee's use of the Premises. If the conditions of this Section 3 have not been satisfied within 90 days after the date first above written, upon payment of \$1200.00 to Lessor, Lessee shall be granted an additional 90 days in which to comply with the terms of this Section 3. If the conditions of this Section 3 have not been satisfied within 180 days after the date first above written, this Lease will not commence.

4. **Term.** The initial term of this Lease ("Initial Term") shall be ten (10) years commencing with the issuance of a permit allowing Lessee to construct its facilities on the Premises ("Commencement Date"). This lease will automatically be renewed for one (1) additional term (a "Renewal Term") of five (5) years unless Lessee provides Lessor notice of intention not to renew not less than 90 days prior to the expiration of the Initial Term or any Renewal Term.

5. **Rent.** Beginning on the Commencement Date, Lessee shall pay Lessor, as rent, the sum of \$3,000.00 ("Rent") per month. Rent shall be payable on the first day of each month, in advance, to Lessor. Rent shall be increased annually on each January 1<sup>st</sup> to reflect increases in the Consumer Price Index Urban Wage Earners and Clerical Workers – Los Angeles, Anaheim, Riverside (CPI). If the Index is discontinued or changed so it is impossible to obtain a continuous measurement of price changes, the Index shall be replaced by a comparable government index.

If the Commencement Date is other than the first day of a calendar month, Lessee shall pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences. 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, or if this Lease is terminated before the expiration of any month for which Rent should have been paid.

### 6. **Improvements; Access.**

(a) Prior to the Commencement Date Lessee may enter the Premises to inspect, survey (and soil test where applicable) and test (collectively "Tests") to determine the suitability of the Premises and to prepare for the construction of Lessee's Facilities. During Tests or pre-construction work, Lessee will have insurance as set forth herein. Lessee will notify Lessor of proposed Tests or pre-construction work and will coordinate the scheduling with Lessor.

(b) Lessee may construct, maintain and operate on the Premises only those radio communications facilities, including but not limited to radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennas and supporting structures and improvements ("Lessee's Facilities") approved by Lessor as depicted in Exhibit "B". Lessee may do work necessary to prepare, add, maintain and alter the Premises for Lessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. Lessee may install warning signs, as approved by Lessor, deemed necessary

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on or about the Premises. Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to Lessee's Facilities and equipment placed on the Premises by Lessee shall be held by Lessee. Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee shall remove Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease.

(c) Lessor shall provide access to Lessee, Lessee's employees, agents, contractors and subcontractors to the Premises twenty-four (24) hours a day, seven (7) days a week. Lessor has easement rights of ingress to and egress from the Premises, and may not be able to grant such rights to Lessee. Lessee shall secure, at Lessee's expense, easement rights to access the Premises.

(d) Lessee may install utilities, at Lessee's expense, and improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power), as approved by Lessor. Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee may place utilities on (or to bring utilities across) Lessor's Property as depicted in Exhibit "C" to service the Premises and Lessee's Facilities. On Lessee's request, this lease will be amended to include leasehold rights across the contiguous property owned by Lessor.

(e) Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

(f) Upon the expiration, cancellation or termination of this Lease, Lessee shall remove improvements installed by Lessee and surrender the Premises to Lessor in good condition, less ordinary wear and tear.

(g) Prior to commencing construction of Lessee's Facilities, Lessee shall obtain Lessor's approval of Lessee's work plans, which approval shall not be unreasonably withheld. Lessor shall give such approval or provide Lessee with its requests for changes within five (5) working days of Lessor's receipt of Lessee's work plans. Lessor shall not be entitled to additional consideration in exchange for approval of Lessee's plans.

**7. Interference with Communications.** Lessee's Facilities shall not disturb the equipment and improvements on Lessor's property. Lessee's Facilities shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Lessor may improve its communications equipment as necessary to meet Lessor's obligation to its customers, but Lessor shall use best efforts to avoid any interference with Lessee's Facilities. Lessor shall require future tenants, licensees, or occupants using Lessor's Property for the operation of wireless communications facilities to obtain Lessee's prior written consent, which consent may not be unreasonably withheld. Pre-existing communications operating in the same manner as on the Commencement Date shall not be deemed interference.

**8. Taxes.** Lessee shall pay taxes assessed against Lessee's facilities, including possessory interest taxes.

**9. Termination.** Lessee may terminate this Lease at any time with thirty (30) days prior notice to Lessor without further liability if Lessee does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority or any easements required from any third party to operate the PCS system, or if any such approval is canceled, expires or is withdrawn or terminated, or if Lessor fails to have proper ownership of the Site or authority to enter into this Agreement, or if Lessee, for any other reason, in its sole discretion, determines that it will be unable to use the Site. Upon termination, Lessor will retain all prepaid rent unless such termination is due to Lessor's failure of proper ownership or authority, or such termination is a result of Lessor's default. Lessor may terminate this Lease without further liability on thirty (30) days prior written notice if Lessee defaults on a Lease covenant, condition or term that is not cured within sixty (60) days of receipt of written notice of default. Five (5) years after the Commencement Date, Lessor may terminate this Lease with eighteen (18) months advance written notice to Lessee if Lessor reasonably determines that the requirements of its customers necessitate use of the Premises in a manner that requires Lessee to vacate the Premises, and if relocation of Lessee's Facilities pursuant to paragraph 18 below cannot resolve the customer's requirements prompting Lessor's termination.

**10. 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, Lessee may elect to terminate this Lease 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, rights and obligations of parties that do not survive the termination of this Lease shall cease as of the date of the damage or destruction.

**11. Condemnation.** If a condemning authority takes all of Lessor's Property, or a portion that in Lessee's opinion is sufficient to render the Premises unsuitable for Lessee's use, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. In a condemnation proceeding, each party shall be entitled to make a claim against the condemning authority for just compensation. 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.

**12. Insurance.**

(a) Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of \$5,000,000.00 per occurrence, (2) Automobile Liability with a combined single limit of \$1,000,000.00 per accident, (3) Workers' Compensation as required by law, and (4) Employer's Liability with limits of \$1,000,000.00 per occurrence. Lessee shall name Lessor as an additional insured with respect to the above Commercial General Liability insurance.

(b) Lessee shall have the right to self-insure with respect to any of the above insurance. Should Lessee desire to self-insure Lessee shall provide Lessor a certificate of self-insurance in the amounts as stated under 12. (a)

**13. Assignment.** Lessee shall not have the right to sublease or assign its rights under this Lease without notice to or the prior written consent of Lessor, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, Lessee shall have right to sublease or assign its rights under this Agreement to any of its subsidiaries, affiliates, or successor legal entities, or to any entity acquiring substantially all of the assets of Lessee or Lessee's FCC license, without prior notice to or the consent of Lessor. However, any assignee or sublessee of Lessee shall be obligated to comply with all of the terms and conditions of this Lease, and any such assignment or sublease shall not alleviate Lessee of any liability under this Lease.

**14. Indemnity.**

(a) Lessee shall defend, indemnify, hold and save Lessor, its officers, agents, employees and volunteers harmless from and against loss, costs, liability or damage (including reasonable attorney's fees and court costs) arising by reason of the willful misconduct or negligence of Lessee, or Lessee's officers, agents or employees, in connection with the use of the Premises, except said indemnification shall not apply to any loss, costs, liability, or damage arising by reason of the negligence or willful misconduct of Lessor or Lessor's officers, agent, or employees.

(b) The foregoing indemnity in paragraph 14(a) above shall survive the termination, cancellation or expiration of this Lease.

**15. Title and Quiet Enjoyment.**

(a) Lessor warrants it has full right, power and authority to execute this Lease. Lessor warrants Lessee shall have quiet enjoyment of the Premises during the Term of this Lease or any Renewal Term.

(b) Lessee may obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Lessee, such title report shows defects of title or liens or encumbrances adversely affecting Lessee's use of the Premises, Lessee may terminate this Lease immediately upon written notice to Lessor.

16. **Repairs.** Lessee shall not be required to make repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors.

17. **Environmental.** Lessor represents that, to the best of its knowledge, the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. Lessee shall not introduce any hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or fraction or derivative thereof) or underground hazardous materials storage tanks in violation of any applicable law. If, during the term of the Lease, there is a determination made pursuant to an official unappealable order of the Federal Communications Commission or any other governmental agency that use of the Premises by Lessee poses a human health hazard which cannot be remediated, then (i) Lessee shall immediately cease all operations on the Premises, and (ii) the Lease shall terminate as of the date of such order.

18. **Relocation of the Antenna Facilities**

(a) Lessor will have the one-time right to relocate Lessee's Facility, or any part thereof, to an alternate ground location on Lessor's property; provided, however, that such relocation will (1) be at Lessee's sole cost and expense, (2) be performed exclusively by Lessee or its agents, (3) not result in any interruption of the communications service provided by Lessee on Lessor's property, (4) not impair, or in any manner alter, the quality of communications service provided by Lessee on and from Lessor's property, and (5) be done in accordance with the terms and conditions contained in paragraphs (b) and (c) below. Upon relocation of the Lessee's Facility, the access and utility easement(s) of Lessee will be relocated as required to operate and maintain Lessee's facility.

(b) Lessor shall exercise its relocation right under paragraph (a) above by (and only by) delivering written notice ("the notice") to the Lessee. In the notice, Lessor will propose an alternate site on Lessor's property to which Lessee may relocate its communications facility. Lessee will have sixty (60) days from the date it receives the notice to evaluate Lessor's proposed relocation site, during which period Lessee will have the right to conduct tests to determine the technological feasibility of the proposed relocation site. If Lessee fails to approve of such proposed relocation site in writing within said sixty-day period, then Lessee will be deemed to have disapproved such proposed relocation site. If Lessee disapproves such relocation site, then Lessor may thereafter propose another relocation site by notice to Lessee in the manner set forth above. Any relocation site which Lessor and Lessee agree upon in writing is referred to hereinafter as the "Relocation Site". Lessee will have a period of ninety (90) days after execution of a written agreement between the parties concerning the location and dimensions of the Relocation Site to relocate (at Lessee's expense) its communications facility to the Relocation Site. The parties agree that they shall cooperate in good faith and exercise commercially reasonable efforts to reach agreement on a suitable relocation site.

(c) Upon relocation of the communications facility of Lessee, or any part thereof, to the Relocation Site, all references to the Lessee's Facilities in the Lease will be deemed to be references to the Relocation Site. Lessor and Lessee hereby agree that the Relocation Site (including the access and utility right of way) may be surveyed by a licensed surveyor at the sole cost of Lessee, and such survey will then replace Exhibit A and become a part hereof and will control or describe the Lessee Facilities. Except as expressly provided in this paragraph 18, Lessor and Lessee hereby agree that in no event will the relocation of the communications facility of Lessee, or any part thereof, under Paragraph (a), above, affect, alter, modify or otherwise change any of the terms and conditions of this Lease.

19. **Miscellaneous.**

(a) This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

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(c) 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 mail to the address of the respective parties set forth below:

Lessor: Las Virgenes Municipal Water District  
4232 Las Virgenes Road, Calabasas, CA. 91302-1994  
Attn: General Manager  
Phone: (818) 251-2100  
Fax: (818) 251-2149

Lessee:

(c) Lessee shall pay Rent to the address stated below:

Las Virgenes Municipal Water District  
4232 Las Virgenes Road, Calabasas, CA. 91302-1994  
Attn: Accounts Receivable  
Phone: (818) 251-2224

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

(d) This Lease shall be governed under the laws of the State of California.

(e) The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals.

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

(h) Upon request either party may require that a Memorandum of Lease be recorded in the form of Exhibit "C".

(i) This Lease constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**LESSOR**  
**LAS VIRGENES MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_

Name: John R. Mundy

General Manager

Tax ID#: 952212398

Approved as to Form:

\_\_\_\_\_

Wayne Lemieux

**LESSEE**  
**XXXXX**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF LESSOR'S PROPERTY**

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

Street Address  
City, State Zip  
APN:

All that real property located in the State of California, County of \_\_\_\_\_, described as follows:

**EXHIBIT B**

**LAYOUT MAP WITH FACILITIES DESCRIBED**

**EXHIBIT C**

**MEMORANDUM OF COMMUNICATIONS SITE LEASE AGREEMENT**