

**RESOLUTION NO. 1228**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO NEGOTIATIONS TO ENTER A LEASE AGREEMENT TO PLACE A TELECOMMUNICATION ANTENNA ON THE STARK STREET WATER TOWER.**

**WHEREAS,** the City owns property at 24451 Stark Street, currently the site of Water Reservoir #2; and

**WHEREAS,** Majorco, L.P., a Delaware limited partnership doing business as Sprint Telecommunications Venture, has a need for an antenna site for the receipt and transmission of wireless communications signals; and

**WHEREAS,** Majorco has identified Water Reservoir #2 as a desirable place to affix said antenna, and has offered to lease same from the City for a monthly fee of \$500 for a term of five years, with one additional five-year extension at Majorco's option, and two additional five-year extensions with the consent of both parties; and

**WHEREAS,** staff have studied this proposal and believe the lease can be granted without adverse impact on the City's water system; and

**WHEREAS,** granting this lease to place an antenna on an existing structure may be more desirable than requiring Majorco to construct a separate antenna facility elsewhere in the City.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE**

That the Mayor is authorized to enter into negotiations to enter a lease agreement substantially as shown in Attachment A with Majorco, subject to review by the City Attorney, for placing an antenna and related facilities at Water Reservoir #2, 24451 Stark Street. The lease to further include in addition to lease payment seven phones and two hundred hours use per month by the City or other considerations.

|            |          |
|------------|----------|
| YEAS:      | <u>6</u> |
| NAYS:      | <u>0</u> |
| ABSTAINED: | <u>0</u> |

  
Paul Thibodeau, Mayor

Dated: 3-14-96

  
George Martinez, City Recorder

Adopted: 3-12-96

PCS SITE AGREEMENT

Name: BIG BLUE WATER TANK

Site I. D. Cascade No. 35A

Premises and Use. Owner leases to Majorco, L. P., a Delaware limited partnership ("MLP"), the site described below:

- appropriate box(es)]
property consisting of approximately 600 square feet of land;
Building interior space consisting of approximately \_\_\_ square;
Building exterior space for attachment of antennas;
Building exterior space for placement of base station equipment;
Tower antenna space on water tank;

Space required for cable runs to connect PCS equipment and antennas,
The location(s) ("Site") shown on Exhibit A, together with a non-exclusive
ement for reasonable access thereto and to the appropriate, in the
region of MLP, source of electric and telephone facilities. The Site will be
ed by MLP for the purpose of installing, removing, replacing, maintaining
operating, at its expense, a personal communications service system
ity ("PCS"), including, without limitation, related antenna equipment and
res. MLP will use the Site in a manner which will not unreasonably disturb
occupancy of Owner's other tenants.

Term. The term of this Agreement (the "Initial Term") is five years,
commencing on the date ("Commencement Date") MLP signs this Agreement.

Agreement will be automatically renewed for a term (the "Renewal Term") of five years each, unless MLP provides Owner notice of
ation not to renew not less than ninety days prior to the expiration of the
al Term or any Renewal Term. Initials: \_\_\_ Date: \_\_\_

Rent. Rent will be paid annually in advance beginning on the
mmencement Date and on each anniversary of it. Until the earlier of (a) the
which is 30 days after the issuance of a building permit for installation of
PCS, or (b) the first day of the month following commencement of physical
aration of the Site, the rent will be \$100,00, the receipt of which Owner
nowledges. Thereafter the annual rent will be \$6,000.00, partial years to
rorated. The annual rent for each Renewal Term will be the annual rent in
ct for the final year of the Initial Term or prior Renewal Term, as the case
be, increased by twenty percent (20%).

Title and Quiet Possession. Owner represents and agrees (a) that it is
Owner of the Site; (b) that it has the right to enter into this Agreement;
the person signing this Agreement has the authority to sign; (d) that
entitled to access to the Site at all times and to the quiet possession of
Site throughout the Initial Term and each Renewal Term so long as MLP
ot in default beyond the expiration of any cure period; and (e) that Owner
not have unsupervised access to the Site or to the PCS equipment.
Initials: \_\_\_ Date: \_\_\_

Assignment/Subletting. MLP will not assign or transfer this Agreement or
et all or any portion of the Site without the prior written consent of Owner,
h consent will not be unreasonably withheld, delayed or conditioned;
ided, however, MLP may assign or sublet without Owner's prior written
ent to any party controlling, controlled by or under common control with
or to any party which acquires substantially all of the assets of MLP.

Notices. All notices must be in writing and are effective when deposited in
U.S. mail, certified and postage prepaid, to the address set forth below or
therwise provided by law.

Improvements. MLP may, at its expense, make such improvements on the
as it deems necessary from time to time for the operation of a transmitter
for wireless voice and data communications. Owner agrees to cooperate
MLP with respect to obtaining any required zoning approvals for the Site
such improvements. Upon termination or expiration of this Agreement,

condition existing on the commencement date, except for ordinary wear
tear. Initials: \_\_\_ Date: \_\_\_

Compliance with Laws. To the best of Owner's knowledge, Owner
resents that Owner's property (including the Site), and all improvements
ed thereon, are in substantial compliance with building, life/safety,
ility and other laws, codes and regulations of applicable governmental
rities. MLP will substantially comply with all applicable laws relating to its
ession and use of the Site.

Interference. MLP will resolve technical interference problems with other
ment located at the Site on the Commencement Date or any equipment
becomes attached to the Site at any future date when MLP desires to add
onal equipment to the Site. Likewise, Owner will not permit the
on of any future equipment which results in technical interference
ems with MLP's then existing equipment.

Utilities. Owner represents that utilities adequate for MLP's use of the
are available. MLP will pay for all utilities used by it at the Site. Owner
cooperate with MLP in MLP's efforts to obtain utilities from any location
ded by Owner or the servicing utility. Initials: \_\_\_ Date: \_\_\_

Termination. MLP may terminate this Agreement at any time by notice
upon without further liability if MLP 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
Owner fails to have proper ownership of the Site or authority to enter into this
Agreement, or if MLP, for any other reason, in its sole discretion, determines
that it will be unable to use the Site for its intended purpose. Upon termination,
all prepaid rent shall be retained by Owner.

12. Default. If either party is in default under this Agreement for a period of
(a) ten days following receipt of notice from the non-defaulting party with
respect to a default which may be cured solely by the payment of money, or
(b) thirty days following receipt of notice from the non-defaulting party with
respect to a default which may not be cured solely by the payment of money,
then, in either event, the non-defaulting party may pursue any remedies
available to it against the defaulting party under applicable law, including, but
not limited to, the right to terminate this Agreement. If the non-monetary
default may not reasonably be cured within a thirty day period, this Agreement
may not be terminated if the defaulting party commences action to cure the
default within such thirty day period and proceeds with due diligence to fully
cure the default.

13. Indemnity. Owner and MLP each indemnifies the other against and holds
the other harmless from any and all costs (including reasonable attorneys
fees) and claims of liability or loss which arise out of the use and/or
occupancy of the Site by the indemnifying party. This indemnity does not
apply to any claims arising from the sole negligence or intentional misconduct
of the indemnified party.

14. Hazardous Substances. Owner represents that it has no knowledge of
any substance, chemical or waste (collectively, "substance") on the Site that is
identified as hazardous, toxic or dangerous in any applicable federal, state or
local law or regulation. MLP shall not introduce or use any such substance on
the Site in violation of any applicable law.

15. Subordination and Non-Disturbance. This Agreement is subordinate to
any mortgage or deed of trust now of record against the Site. However,
promptly after this Agreement is fully executed, Owner will request the holder
of any such mortgage or deed of trust to execute a non-disturbance
agreement and Owner will cooperate with MLP toward such end to the extent
that such cooperation does not cause Owner additional financial liability or
administrative expense.

16. Miscellaneous. (a) This Agreement applies to and binds the heirs,
successors, executors, administrators and assigns of the parties to this
Agreement; (b) This Agreement is governed by the laws of the State in which
the Site is located; (c) If requested by MLP, Owner agrees promptly to
execute and deliver to MLP a recordable Memorandum of this Agreement in
the form of Exhibit B; (d) This Agreement (including the Exhibits) constitutes
the entire agreement between the parties and supersedes all prior written
and verbal agreements, representations, promises or understandings between the
parties. Any amendments to this Agreement must be in writing and executed
by both parties; (e) If any provision of this Agreement is invalid or
unenforceable with respect to any party, the remainder of this Agreement or
the application of such provision to persons other than those as to whom it is
held invalid or unenforceable, will not be affected and each provision of this
Agreement will be valid and enforceable to the fullest extent permitted by law;
and (f) The prevailing party in any action or proceeding in court or mutually
agreed upon 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.

The following Exhibits are attached to and made a part of this
Agreement: Exhibit A, B and C (Addendum).

OWNER: CITY OF TROUTDALE
By: \_\_\_\_\_
Its: \_\_\_\_\_
S.S./Tax No.: \_\_\_\_\_
See Exhibit \_\_\_ for continuation of Owner signatures
Address: City Hall, Troutdale, OR 97060
Date: \_\_\_\_\_

MAJORCO, L.P., a Delaware limited partnership
By: \_\_\_\_\_
Its: \_\_\_\_\_
Address: 7770 SW Mohawk, Bldg. F, Tualatin, OR 97062
Date: \_\_\_\_\_

EXHIBIT A

Site Name South Troutdale

PCS Site Agreement  
Site Description

Site I. D. 035A

Site situated in the City of Troutdale, County of Multnomah, State of Oregon commonly described as Troutdale

Legal Description:

LEGAL DESCRIPTION

PARCEL 1: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Base Line 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to van J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of the tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence North 1° 19' 40" East along said West line, a distance of 79.62 feet; thence South 88° 35' 50" East parallel with the South line of said Section 35, a distance of 159.00 feet; thence South 1° 19' 40" West 79.62 feet to the point of beginning.

PARCEL 2: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Baseline, 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to van J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence South 1° 19' 40" West 16.38 feet; thence South 88° 35' 50" East 159.00 feet; thence North 1° 19' 40" East 16.38 feet to the point of beginning.

Owner Initials \_\_\_\_\_

MLP Initials \_\_\_\_\_

Note: Owner and MLP may, at MLP's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site. \_\_\_\_\_

# EXHIBIT A

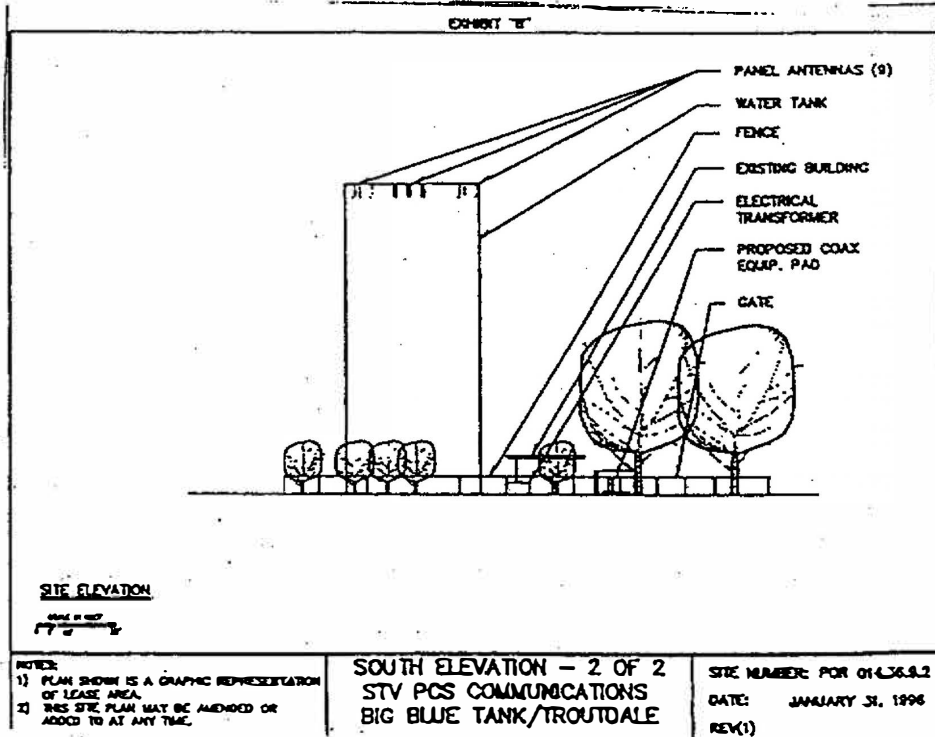
Site Name Troutdale Water Tank

PCS Site Agreement  
Site Description

Site I. D. 035A

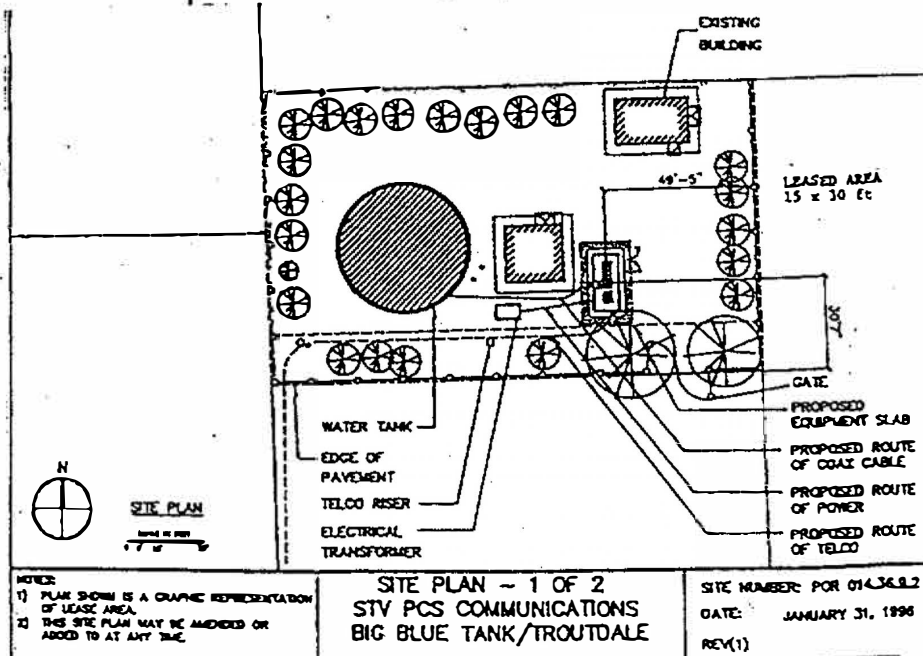
Site situated in the City of Troutdale, County of Multnomah, State of Oregon commonly described as Troutdale Water Tank

Sketch of Site:



Owner Initials \_\_\_\_\_

MLP Initials \_\_\_\_\_



Note: Owner and MLP may, at MLP's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site. \_\_\_\_\_

Site Name: BIG BLUE WATER TANK

PCS Site Agreement  
Memorandum of PCS Site Agreement

Site I. D. 035A

This memorandum evidences that a lease was made and entered into by written PCS Site Agreement dated \_\_\_\_\_, between City of Troutdale ("Owner") and MajorCo, L.P., a Delaware limited partnership ("MLP"), d/b/a Sprint Telecommunications Venture, the terms and conditions of which are incorporated herein by reference.

Such Agreement provides in part that Owner leases to MLP a certain site ("Site") located at 24451 Stark Street, City of Troutdale, County of Multnomah, State of Oregon, within the property of Owner which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of five (5) years commencing on \_\_\_\_\_, 19\_\_, which term is subject to one (1) additional five (5) year extension period by MLP and two (2) additional five (5) year extension periods with the consent of both parties.

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

"OWNER"

\_\_\_\_\_

\_\_\_\_\_

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

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

Address: \_\_\_\_\_

See Exhibit B1 for continuation of Owner signatures

"MLP"

MajorCo, L.P., a Delaware limited partnership

\_\_\_\_\_

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

EXHIBIT C

ADDENDUM

Site Name: BIG BLUE WATER TANK

Site I.D. Cascade No. 35A

Site Address: 24451 Stark Street, Troutdale, OR 97060

This Addendum amends, supplements or modifies the terms of the PCS Site Agreement to which this Addendum is attached. If there are any inconsistencies between the terms of this Addendum and the terms of the PCS Site Agreement, the terms of this Addendum shall govern. All other terms not amended, supplemented, or modified shall remain in effect.

The following amendments and supplements are made to this PCS Site Agreement:

**Paragraph 10 Amendment:**

A. MLP will arrange for separate electric service and metering at no cost to Owner and purchase its electrical service directly from the appropriate utility company. MLP will also be responsible for obtaining telephone service and its own telephone costs and charges.

**Paragraph 7 Amendment:**

A. This lease is conditioned upon MLP's obtaining all necessary government permits and approvals for use of the Site. The execution of this Lease by Owner shall not be deemed to be a commitment by Owner to issue any such permits or approvals.

B. Upon termination or expiration of this Agreement, MLP shall remove its equipment and improvements and will restore the Site to the condition existing on the commencement date, except for ordinary wear and tear.

**Additional Term:**

A. MLP shall pay any personal or real property taxes assessed against its equipment or its improvements on the associated with the use of the Site.

Owner's Initials: \_\_\_\_\_

Date: \_\_\_\_\_

MLP Initials: \_\_\_\_\_

Date: \_\_\_\_\_