



## Town Council Agenda Report

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Date: May 28, 2019 Item No.3  
To: Honorable Mayor and Town Council  
Subject: VERIZON AT LENNY BREWSTER SPORTS COMPLEX SITE AGREEMENT  
  
From: Douglas Robertson, Town Manager  
Submitted by: Lori Lamson, Assistant Town Manager  
Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

Approve the attached Cell Site Lease Agreement between SMSA Limited Partnership (dba Verizon Wireless) (“Licensee”) and the Town of Apple Valley (“Licensor”) establishing the terms and conditions applicable to the installation and construction of a two (2)-carrier telecommunication facility designed as a seventy-five (75)-foot tall faux water tank at Lenny Brewster Sports Complex.

### SUMMARY:

The Town Council directed staff to market Town-owned properties to telecommunication service providers for the purpose of generating additional revenue to the Town and improving cellular phone service in the Town where appropriate. The lease agreement, if approved, will permit the construction of a seventy-five (75)-foot, two (2)-carrier wireless telecommunication tower designed as a faux water tank. The water tank will have the Town’s logo and the name of the park. The tower will be situated in the southeast corner of Lenny Brewster Sports Complex adjacent to Otoe Road and will include a lease area of 784 square feet, surrounded by an eight (8)-foot CMU block wall enclosing the equipment. The Planning Commission approved this facility under Conditional Use Permit No. 2018-007 and Deviation No. 2018-006 on August 15, 2018.

The Agreement is different than previously approved agreements, including a one lump sum payment of \$350,000. It includes a term of 30 years.

Based upon the foregoing, staff recommends adoption of the form motion.

### FISCAL IMPACT:

This Agreement will generate a one lump sum payment of \$350,000 to be paid upon within sixty (60) days from the first day of the month, following the first day of commencing the installation of the facility.

**ATTACHMENTS:**

Site Lease Agreement  
Site Plan and Elevation Drawings

## LAND LEASE AGREEMENT

This Land Lease Agreement (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , between the Town of Apple Valley, with its principal offices located 14955 Dale Evans Parkway, Apple Valley, CA 92307, hereinafter designated LESSOR, and Los Angeles SMSA Limited Partnership d/b/a Verizon Wireless with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

### WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. GRANT. In accordance with this Agreement, LESSOR hereby grants to LESSEE the right to install, maintain and operate communications equipment ("Use") upon the Premises (as hereinafter defined), which are a part of that real property identified as Lenny Brewster Sports Complex and owned by LESSOR at 21024 Otoe Road, Apple Valley, CA 92307 (the "Property"). The Property is legally described on Exhibit "A" attached hereto and made a part hereof. The Premises are a portion of the Property and consist of a 28' by 28' portion of ground space containing approximately 784 square feet, and are shown in detail on Exhibit "B" attached hereto and made a part hereof. LESSEE may survey the Premises. Upon completion, the survey shall replace Exhibit "B" in its entirety.

2. INITIAL TERM. This Agreement shall be effective as of the date of execution by both Parties ("Effective Date"). The term of the Agreement shall be for 30 years (the "Term") beginning on the Commencement Date (as hereinafter defined). The "Commencement Date" shall be the first day of the month after LESSEE begins installation of LESSEE's communications equipment.

3. COMPENSATION.

(a). Lessee shall pay to Lessor a one-time lump sum rent payment in the total amount of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) (the "Compensation"), which Compensation shall be the rent payable by LESSEE for the Term of the Agreement. The Compensation shall be due and payable within sixty (60) days following the Commencement Date.

(b). As additional consideration for this Agreement, LESSEE shall pay LESSOR a one-time, non-refundable, lump-sum signing bonus of \$1,500, which shall be considered additional rent for the Premises for the period from the Effective Date until the Commencement Date. The signing bonus shall be paid by LESSEE to LESSOR within 90 days of the Effective Date. LESSOR agrees the payment to be made by LESSEE under this Paragraph 4(b) is fair and adequate payment in exchange for LESSEE intentionally delaying installation of LESSEE's communications equipment, and LESSOR recognizes that Paragraph 2 of this Agreement governs the Commencement Date. This Paragraph 3(b) does not impact whether or not LESSEE chooses to install LESSEE's communications equipment and commence the Term.

(c). For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and

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local withholding forms if required; and (iii) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

4. ACCESS. LESSEE shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for the purpose of installation, operation and maintenance of LESSEE's communications equipment over or along a 12' foot wide right-of-way ("Easement"), which shall be depicted on Exhibit "B" attached hereto. LESSEE may use the Easement for the installation, operation and maintenance of wires, cables, conduits and pipes for all necessary electrical, telephone, fiber and other similar support services. In the event it is necessary, LESSOR agrees to grant LESSEE or the provider the right to install such services on, through, over and/or under the Property, provided the location of such services shall be reasonably approved by LESSOR. Notwithstanding anything to the contrary, the Premises shall include such additional space sufficient for LESSEE's radio frequency signage and/or barricades as are necessary to ensure LESSEE's compliance with Laws (as defined in Paragraph 27).

5. CONDITION OF PROPERTY. LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's Use and clean and free of debris. LESSOR represents and warrants to LESSEE that as of the Effective Date, the Premises (a) in compliance with all Laws; and (b) in compliance with all EH&S Laws (as defined in Paragraph 24).

6. IMPROVEMENTS. The communications equipment including, without limitation, the tower structure, antennas, conduits, fencing and other screening, and other improvements shall be at LESSEE's expense and installation shall be at the discretion and option of LESSEE (collectively, the "Communication Facility"). LESSEE shall have the right to replace, repair, add or otherwise modify its communications equipment, tower structure, antennas, conduits, fencing and other screening, or other improvements or any portion thereof and the frequencies over which the communications equipment operates, whether or not any of the communications equipment, antennas, conduits or other improvements are listed on any exhibit.

7. GOVERNMENT APPROVALS. LESSEE's Use is contingent upon LESSEE obtaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities (collectively, the "Government Entities") as well as a satisfactory soil boring test, environmental studies, or any other due diligence Lessee chooses that will permit LESSEE's Use. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to LESSEE's Use.

8. TERMINATION. Notwithstanding anything to the contrary contained herein, LESSEE shall have the right to terminate this Agreement for any reason or no reason, without the approval or consent of LESSOR, upon prior written notice to LESSOR. In the event LESSEE exercises its right to terminate this Agreement pursuant to this Paragraph, LESSEE acknowledges and agrees that the payments made by LESSEE pursuant to Paragraph 3 above shall be retained by LESSOR and shall be non-refundable. Upon termination, LESSEE shall restore the Premises to the condition which existed immediately prior to the Commencement Date, reasonable wear and tear excepted.

9. INDEMNIFICATION.

(a) LESSEE agrees to indemnify, defend and hold LESSOR, its successors and assigns and its officials, officers, agents, employees, invitees, engineers, contractors and subcontractors, harmless from and against any and all injury, loss, damage or liability (and any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) directly caused by LESSEE's or its officers', agents', employees', contractors', or subcontractors' installation, use, maintenance, repair or removal of the Communication Facility or to the extent resulting from or arising out of the negligence or willful misconduct or omission of LESSEE, its officers, agents, employees, contractors, or subcontractors, except to the extent that such claim is caused by the negligence or willful misconduct of LESSOR or its officers, agents, employees, engineers, contractors or subcontractors who are directly responsible to or acting under the control of LESSOR.

(b) LESSOR agrees to indemnify, defend and hold LESSEE, its successors and assigns and its officers, agents, employees, engineers, contractors and subcontractors, harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) directly caused by the negligence or willful misconduct of LESSOR or its employees or agents, or LESSOR's breach of any provision of this Agreement, except to the extent attributable to the negligence or intentional act or omission of LESSEE, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, the Parties waive any claims they may have against the other with respect to consequential, incidental or special damages.

10. INSURANCE.

(a) During the Term, LESSEE will carry, at its own cost and expense, the following insurance:

(i) Workers' compensation insurance as required by law;

(ii) commercial general liability (CGL) insurance with respect to its activities on the Property including liability arising from a negligent, or wrongful act of LESSEE, such insurance to afford protection of Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form or a substitute form providing substantially equivalent coverage. Required limits may be satisfied with a combination of primary and excess/umbrella liability insurance. LESSEE's CGL insurance shall contain a provision including LESSOR as an additional insured as their interest may appear under this Agreement. Such additional insured coverage:

(1) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by LESSEE or its employees;

(2) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of LESSEE or its employees or where such coverage is prohibited by law or to claims arising out of the gross negligence of LESSOR, its employees, agents or independent contractors; and

(3) shall not exceed LESSEE's indemnification obligation under this Agreement, if any.

(iii) Automobile Liability insurance (written on ISO form or its equivalent) with a combined single limit of liability of One Million Dollars (\$1,000,000) each accident for bodily injury and property damage covering all "owned," "hired" and "non-owned" vehicles used in LESSEE's business operations.

(iv) Commercial Property Insurance including coverage while under construction and installation. Such coverage shall:

(1) Provide coverage for Premises and LESSEE's Communication Facility on the Premises. This coverage shall be at least as broad as that provided by the ISO Causes-of-Loss Special Form, including earthquake (if LESSEE deems it reasonable), Ordinance or Law Coverage, flood, and Business Interruption equal to one (1) year's annual rent ;

(b) The commercial general liability insurance provided hereunder shall include a "separation of insureds" clause and shall apply separately to each insured and additional insured against whom a claim is made or suit is brought. No policy shall contain any provision or exclusion (including a "cross-liability" or similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

(c) Notwithstanding the foregoing, LESSEE may self-insure the coverages required in subsection (a). In the event LESSEE elects to self-insure its obligation to include LESSOR as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)):

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

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

(iii) LESSOR shall fully cooperate with LESSEE in the defense of the claim, demand, lawsuit, or the like.

(d) Concurrently with LESSEE's execution hereof, LESSEE shall deliver to LESSOR certificates of insurance and blanket additional insured endorsements providing the required additional insured status on insurance policies. The evidence provided must be adequate to allow LESSOR to determine if all insurance requirements have been met. LESSOR shall have no duty to perform under the Agreement until such evidence of insurance, in compliance with all requirements of this section has been provided. LESSEE shall promptly deliver to LESSOR a certificate of insurance as evidence of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the duration

of the Agreement. Such evidence shall be delivered to LESSOR within seven (7) days of the expiration or renewal date of any policy.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 9 and 23, a violation of Paragraph 26, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

12. INTERFERENCE.

(a) The following are preexisting radio frequencies licensed for use by LESSOR on the Property or the Fire Station near the Property: 130- 180 VHF Mega Hurst and 790-862 800 Mega Hurst. LESSEE shall be responsible for evaluating the potential for interference with these frequencies. The Communication Facility shall not disturb the communications configurations, equipment and frequencies which exist on the Commencement Date on the Property or properties adjacent to the Property which are owned or operated by or for the benefit of LESSOR, ("Preexisting Communications") and the Communication Facility shall comply with all noninterference rules of the Federal Communications Commission ("FCC"). In the event any LESSEE equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. If such interference cannot be corrected within seven (7) days of LESSEE's receipt of written notice of such interference, LESSOR may require that LESSEE cease (or cause the cessation of) operation of the interfering equipment until such interference can be so corrected at which time the operation of such equipment may resume. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue.

(b) LESSOR shall permit the installation of only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the communications operations of LESSEE described in Section 2, above, with the exception of Preexisting Communications and any existing or future communication equipment required solely for the LESSOR's business operations which shall not be deemed to cause interference. In the event any such harmful interference does not cease within twenty-four (24) hours after receipt of notice of interference from LESSEE, the parties acknowledge that continuing interference will cause irreparable injury to LESSEE, and therefore, LESSEE shall have the right to bring action to enjoin such interference or to terminate this Agreement immediately upon notice to LESSOR.

(c) Unless such activity is necessary to LESSORs use of the Property or the Fire Station for the purpose of providing public services, or conducting the business of the LESSOR, LESSOR will not use, nor will LESSOR permit its employees, LESSEEs, licensees, invitees or agents to use, any portion of the Property in any way which unreasonably interferes with the Communication Facility, the operations of LESSEE or the rights of LESSEE under this Agreement. LESSOR will cause such interference to cease within twenty-four (24) hours after

receipt of notice of interference from LESSEE. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that LESSEE will suffer irreparable injury, and therefore, LESSEE will have the right, in addition to any other rights that it may have at law or in equity, for LESSOR's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to LESSOR.

13. REMOVAL AT END OF TERM. Upon expiration or within 90 days of earlier termination, LESSEE shall remove LESSEE's Communications Equipment (except footings) and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that the communications equipment shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LESSEE to remain on the Premises after termination of the Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

14. HOLDOVER. If upon expiration of the Term the Parties are negotiating a new lease or a lease extension, then this Agreement shall continue during such negotiations on a month to month basis at a monthly rental amount equivalent to a pro-rata calculation of the Compensation amortized over the Term on a straight-line basis (i.e., the Compensation divided by the number of months in the Term). In the event that the Parties are not in the process of negotiating a new lease or lease extension and LESSEE holds over after the expiration or earlier termination of the Term, then Lessee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed rental.

15. RIGHT OF FIRST REFUSAL. If at any time after the Effective Date, LESSOR receives an offer or letter of intent from any person or entity that is in the business of owning, managing or operating communications facilities or is in the business of acquiring landlord interests in agreements relating to communications facilities, to purchase fee title, an easement, a lease, a license, or any other interest in the Premises or any portion thereof or to acquire any interest in this Agreement, or an option for any of the foregoing, LESSOR shall provide written notice to LESSEE of said offer ("LESSOR's Notice"). LESSOR's Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, a description of the portion of and interest in the Premises and/or this Agreement which will be conveyed in the proposed transaction, and a copy of any letters of intent or form agreements presented to LESSOR by the third party offeror. LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the terms and conditions of such offer or by effectuating a transaction with substantially equivalent financial terms. If LESSEE fails to provide written notice to LESSOR that LESSEE intends to meet such bona fide offer within thirty (30) days after receipt of LESSOR's Notice, LESSOR may proceed with the proposed transaction in accordance with the terms and conditions of such third party offer, in which event this Agreement shall continue in full force and effect and the right of first refusal described in this Paragraph shall survive any such conveyance to a third party. If LESSEE provides LESSOR with notice of LESSEE's intention to meet the third party offer within thirty (30) days after receipt of LESSOR's Notice, then if LESSOR's Notice describes a transaction involving greater space than the Premises, LESSEE may elect to proceed with a transaction covering only the Premises and the purchase price shall be pro-rated on a square footage basis. Further, LESSOR acknowledges and agrees that if LESSEE exercises this right of first refusal, LESSEE may require a reasonable period of time to conduct due diligence and effectuate the closing of a transaction on substantially equivalent financial terms of the third party offer. LESSEE may



elect to amend this Agreement to effectuate the proposed financial terms of the third party offer rather than acquiring fee simple title or an easement interest in the Premises. For purposes of this Paragraph, any transfer, bequest or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale for which LESSEE has any right of first refusal.

16. RIGHTS UPON SALE. Should LESSOR, at any time during the Term, decide (i) to sell or otherwise transfer all or any part of the Property, or (ii) to grant to a third party by easement or other legal instrument an interest in and to any portion of the Premises, such sale, transfer, or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder. In the event that LESSOR completes any such sale, transfer, or grant described in this Paragraph without executing an assignment of the Agreement whereby the third party agrees in writing to assume all obligations of LESSOR under this Agreement, then LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Agreement.

17. LESSOR'S TITLE. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the Effective Date and covenants during the Term that LESSOR has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easement, restrictions or other impediments of title that will adversely affect LESSEE's Use.

18. ASSIGNMENT. Without any approval or consent of the other Party, this Agreement may be sold, assigned or transferred by either Party to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. LESSEE may assign this Agreement to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization without approval or consent of LESSOR. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the other Party, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of either Party shall constitute an assignment hereunder. LESSEE may sublet the Premises in LESSEE's sole discretion.

19. NOTICES. Except for notices permitted via telephone in accordance with Paragraph 12, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Attention: Town Manager

LESSEE: Los Angeles SMSA Limited Partnership,  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate  
Site: Wintun

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

20. SUBORDINATION AND NON-DISTURBANCE. Within 15 days of the Effective Date, LESSOR shall obtain a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's rights under this Agreement. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will honor all of the terms of the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

21. DEFAULT. It is a "Default" if (i) either Party fails to comply with this Agreement and does not remedy the failure within 30 days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion within 90 days after the initial written notice, or (ii) LESSOR fails to comply with this Agreement and the failure interferes with LESSEE's Use and LESSOR does not remedy the failure within 5 days after written notice from LESSEE or, if the failure cannot reasonably be remedied in such time, if LESSOR does not commence a remedy within the allotted 5 days and diligently pursue the cure to completion within 15 days after the initial written notice. The cure periods set forth in this Paragraph 21 do not extend the period of time in which either Party has to cure interference pursuant to Paragraph 12 of this Agreement.

22. REMEDIES. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within 30 days of its receipt of an invoice setting forth the amount due, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under this Agreement until the full undisputed amount is fully reimbursed to LESSEE.

23. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). LESSEE shall indemnify and hold harmless the LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. LESSOR shall indemnify and hold harmless LESSEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of LESSEE. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

24. CASUALTY. If a fire or other casualty damages the Property or the Premises and impairs LESSEE's Use, rent shall abate until LESSEE's Use is restored. If LESSEE's Use is not restored within 45 days, LESSEE may terminate this Agreement.

25. CONDEMNATION. If a condemnation of any portion of the Property or Premises impairs LESSEE's Use, Lessee may terminate this Agreement. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to LESSEE's communications equipment, relocation costs and, specifically excluding loss of LESSEE's leasehold interest, any other damages LESSEE may incur as a result of any such condemnation.

26. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, EH&S Laws, rules, regulations, ordinances, directives, covenants, easements, consent decrees, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (i) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises; and (ii) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. It shall be LESSOR's obligation to comply with all Laws relating to the Property, without regard to specific use

(including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).

27. TAXES.

(a). LESSOR shall invoice and LESSEE shall pay any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on the LESSEE and required to be collected by the LESSOR based on any service, rental space, or equipment provided by the LESSOR to the LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity that are imposed on the LESSEE and required to be paid by the LESSEE that are directly attributable to the LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within 60 days after presentation of a receipted bill and/or assessment notice which is the basis for such taxes or charges. LESSOR shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are attributable to LESSOR's Property or any portion thereof imposed by any Government Entity.

(b). LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

28. NON-DISCLOSURE. The Parties agree this Agreement and any information exchanged between the Parties regarding the Agreement are confidential. The Parties agree not to provide copies of this Agreement or any other confidential information to any third party without the prior written consent of the other or as required by law. If a disclosure is required by law, prior to disclosure, the Party shall notify the other Party and cooperate to take lawful steps to resist, narrow, or eliminate the need for that disclosure.

29. MOST FAVORED LESSEE. LESSOR represents and warrants that the rent, benefits and terms and conditions granted to LESSEE by LESSOR hereunder are now and shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term LESSOR shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR's compliance with this requirement shall be subject, at LESSEE's option, to independent verification.

30. MISCELLANEOUS. This Agreement contains all agreements, promises and understandings between the LESSOR and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement shall be governed, interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever. LESSOR agrees to execute a Memorandum of this Agreement, which LESSEE may record with the appropriate recording officer. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement.

[Signature page follows. The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

Town of Apple Valley

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

Name: Doug Robertson

Title: Town Manager

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

**LESSEE:**

Los Angeles SMSA Limited Partnership,  
dba Verizon Wireless

By: AirTouch Cellular Inc., Its: General Partner

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

Name: Steven Lamb

Title: Director - Network

Date: 5/8/19

**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 75 OF TRACT 4286, AS PER PLAT RECORDED IN BOOK 55 OF MAPS, PAGES 41-42, RECORDS OF SAID COUNTY OF SAN BERNARDINO;

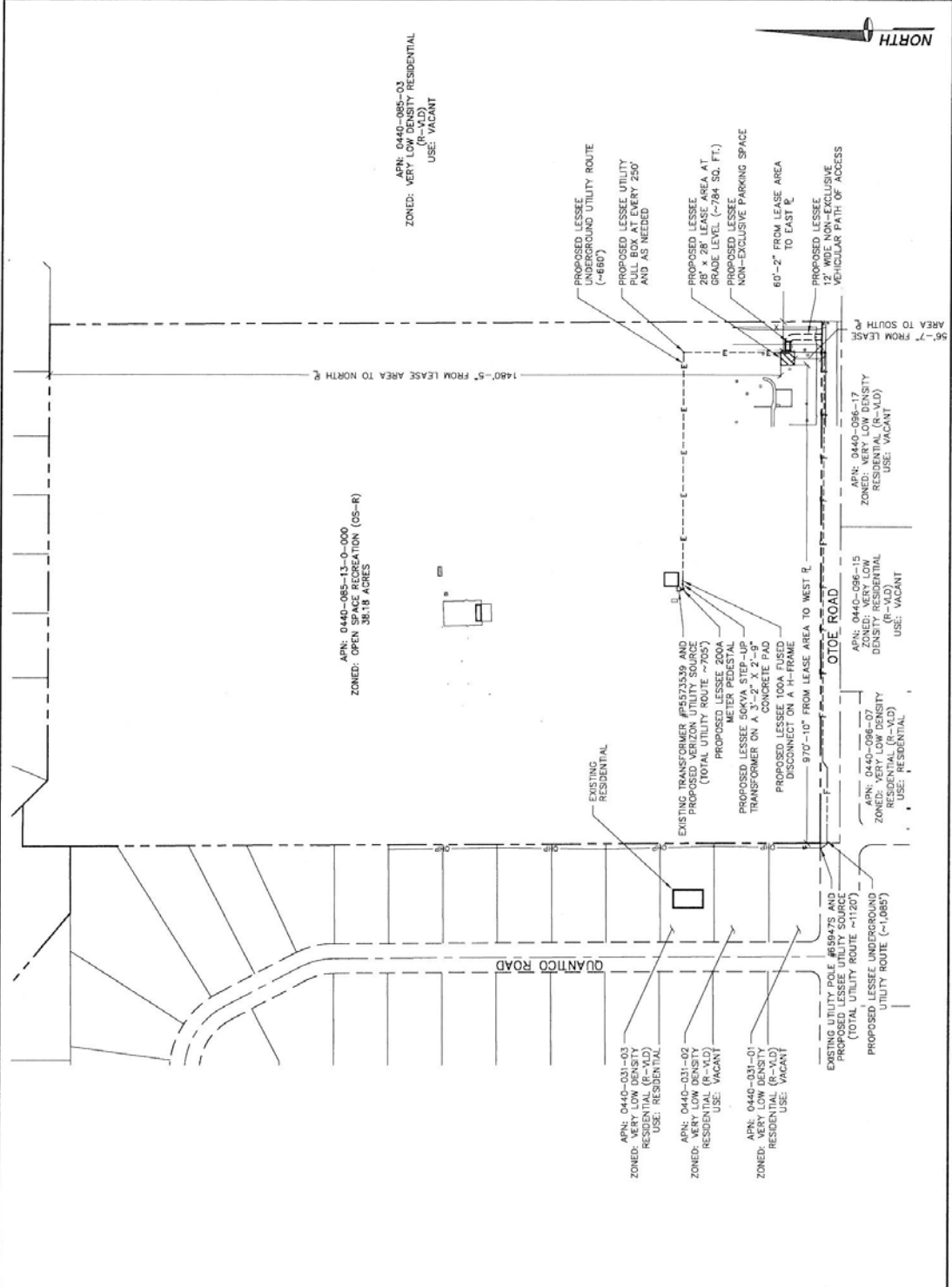
1. THENCE SOUTH 89° 59' 22" EAST, 925.95 FEET ALONG TEE SOUTH LINE OF SAID TRACT 4286;
2. THENCE SOUTH 00° 14' 00" EAST, 1,605.26 FEET PARALLEL WITH THE EAST LINE OF TRACT 5436, AS PER MAP RECORDED IN BOOK 65 OF MAPS, PAGES 17 AND 18, RECORDS OF SAID COUNTY OF SAN BERNARDINO, TO A POINT IN THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 4;
3. THENCE SOUTH 89° 57' 30" WEST, 1,059.02 FEET ALONG SAID SOUTH LINE, TO THE SOUTHEAST CORNER OF SAID TRACT 5436;
4. THENCE NORTH 00° 14' 00" WEST, 1,559.55 FEET ALONG THE EASTERLY LINE OF SAID TRACT 5436 TO THE SOUTHEAST CORNER OF LOT 87 OF SAID TRACT 5436;
5. THENCE SOUTH 89° 46' 00" WEST ALONG THE SOUTH LINE OF SAID LOT 87 A DISTANCE OF 135.86 FEET TO AN ANGLE POINT AND SAID ANGLE POINT BEING THE SOUTHWEST CORNER OF SAID LOT 87;
6. THENCE NORTH 50° 14' 11" WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 87 A DISTANCE OF 307.84 FEET MORE OR LESS TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AZTEC COURT AND SAID POINT ALSO BEING A POINT ON A NON TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 50.00 FEET AND THROUGH SAID POINT A RADIAL LINE BEARS NORTH 50° 13' 52" WEST;
7. THENCE NORTHERLY ALONG SAID CURVE AND SAID EASTERLY RIGHT OF WAY LINE OF AZTEC COURT, THROUGH A CENTRAL ANGLE 80° 00' 00" AN ARC DISTANCE OF 69.81 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF SAID LOT 87 AND SAID ANGLE POINT BEING THE NORTHWEST CORNER OF SAID LOT 87;
8. THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE OF AZTEC COURT NORTH 49° 45' 46" EAST ALONG THE NORTHWESTERLY LINE OF SAID LOT 87 A DISTANCE 207.03 FEET MORE OR LESS TO THE MOST NORTHERLY CORNER OF SAID LOT 87;
9. THENCE SOUTH 44° 59' 27" EAST ALONG THE NORTHEASTERLY LINE OF SAID LOT A DISTANCE OF 421.82 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 87;
10. THENCE CONTINUING SOUTH 44° 59' 27" EAST ALONG THE SOUTHWESTERLY LINE OF LOT 75 OF TRACT 4286, AS PER MAP RECORDED IN BOOK 55 OF MAPS, PAGES 41 AND 42, RECORDS OF SAID COUNTY OF SAN BERNARDINO, 69.84 FEET MORE OR LESS TO THE POINT OF BEGINNING.

APN: 0440-085-13-0-000

EXHIBIT "B"  
SITE PLAN OF THE PREMISES

Wintun  
100109712\_3





LEASE EXHIBIT-VzT WINTUN-21024 OTOE ROAD, APPLE VALLEY, CALIFORNIA 92307



REV.	DATE	DESCRIPTION	BY
1	06/17/18	ISSUE FOR PERMITS	D.L.C.
2	06/04/18	ISSUE FOR PERMITS	R.C.

**SPECTRUM**  
SPECTRUM SERVICES, INC.  
440 EAST CALIFORNIA STREET  
IRVINE, CALIFORNIA 92618  
PHONE: (949) 484-4401  
FAX: (949) 485-2808

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**VZT WINTUN**  
**MTX-45/B90-18**  
MCE  
21224 OTOE ROAD  
APPLE VALLEY, CALIFORNIA  
92207

SHEET TITLE:  
SITE DETAIL, ANTENNA &  
CABLE SCHEDULE AND  
ANTENNA LAYOUT

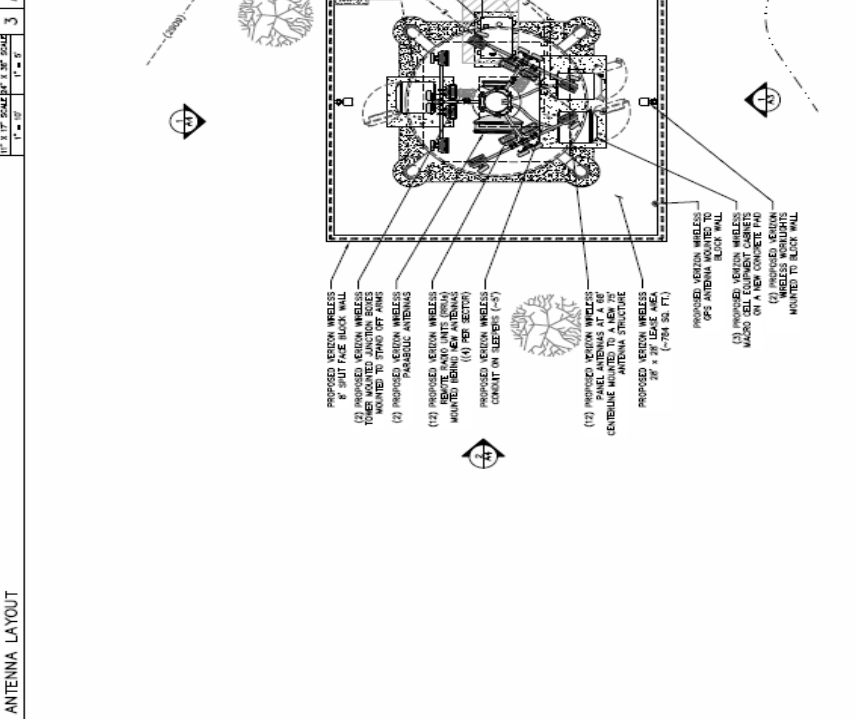
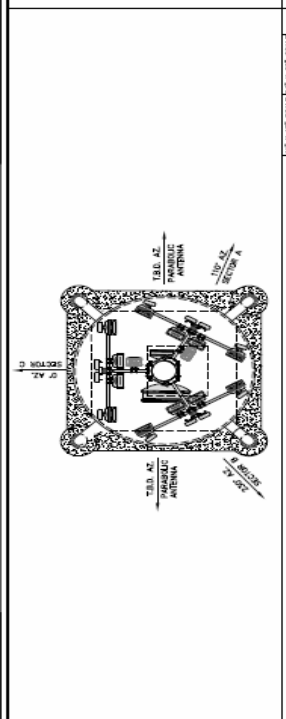
REVISION:  
**A3** 1

NOTE: CONTRACTOR TO FIELD VERIFY CABLE LENGTHS PRIOR TO ORIGINAL PUBLICATION, OR INSTALLATION OF CABLES.

ANTENNA SECTION	ANTENNA #	# OF ANTENNAS	CEILINGLINE #	CABLE LENGTH	CABLE TYPE	COLOR CODE	TRIP LAMPERS (AMP'S)	LEADERS (AMP'S)	COMMENTS
SECTION A	1107	4	4	68'	90'		5'	15'	..
SECTION B	2307	4	4		(2) 1.7" RIBBLEX		5'	15'	..
SECTION C	07	4	4				5'	15'	..
PANORAMA ANTENNA	T.B.D.	2		T.B.D.					..
GPS	N/A	1			1/2" COAX				..

SCALE: 1" = 10'

**3 ANTENNA AND CABLE SCHEDULE**



LEGEND:

- LEASE AREA
- CEILINGLINE
- EASEMENT
- RIGHT-OF-WAY
- SECTION LINE
- PROPERTY LINE
- OVERHEAD POWER
- EXISTING CHAIN LINK FENCE
- PROPOSED CHAIN LINK FENCE
- PROPOSED WROUGHT IRON FENCE
- EXISTING 1" CONTOUR
- EXISTING 5' CONTOUR
- EXISTING BLOCK WALL
- PROPOSED BLOCK WALL
- THE HIGHLIGHT
- PARKING LOT AREA LIGHT
- OFFICIAL RECORD
- POWER POLE

GRAPHIC SCALE (IN FEET): 0, 2.0, 4.0, 6.0, 8.0, 10.0

1" = 10'

**SITE DETAIL**

REV.	DATE	DESCRIPTION	BY
1	05/07/18	ISSUE FOR PERMITS	D.C.
2	05/07/18	ISSUE FOR PERMITS	D.C.
3	05/07/18	ISSUE FOR PERMITS	D.C.

**SPECTRUM SERVICES, INC.**  
 4405 E. AIRPORT DRIVE, SUITE 100  
 IRVINE, CALIFORNIA 92618  
 TEL: (949) 450-4000  
 FAX: (949) 450-4000

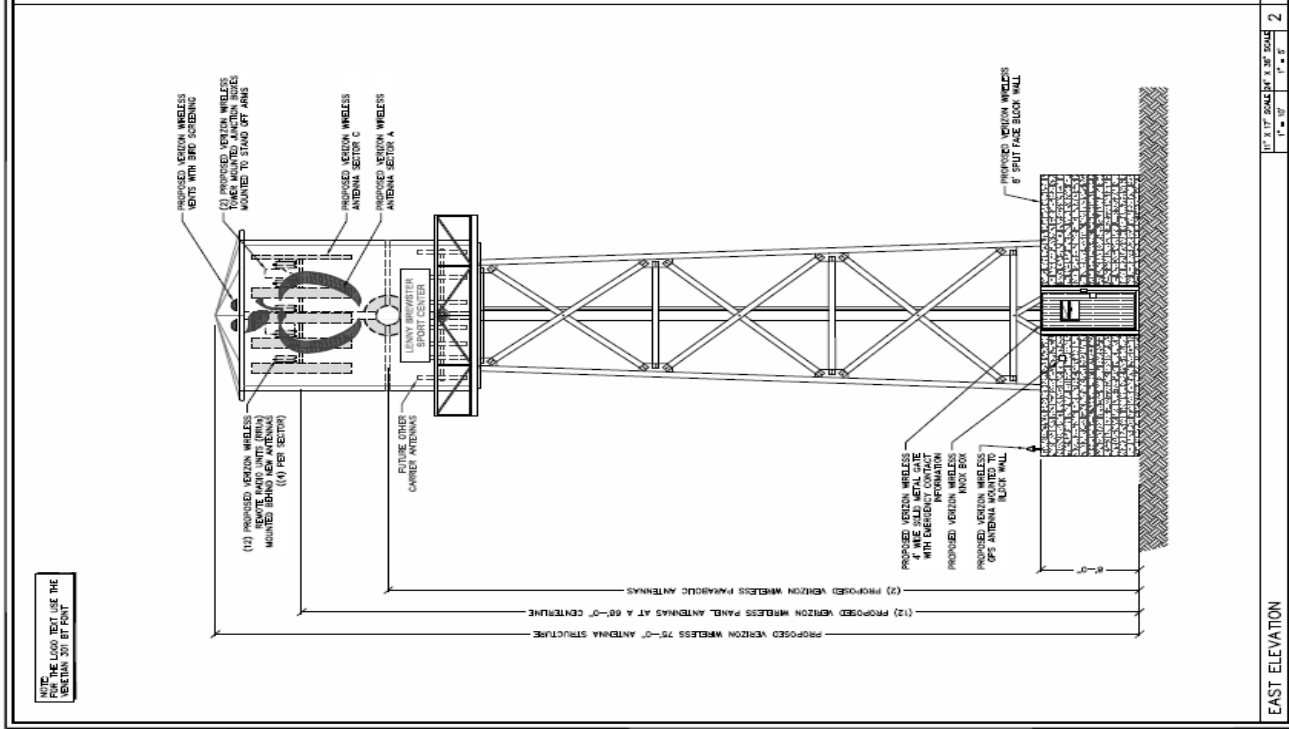
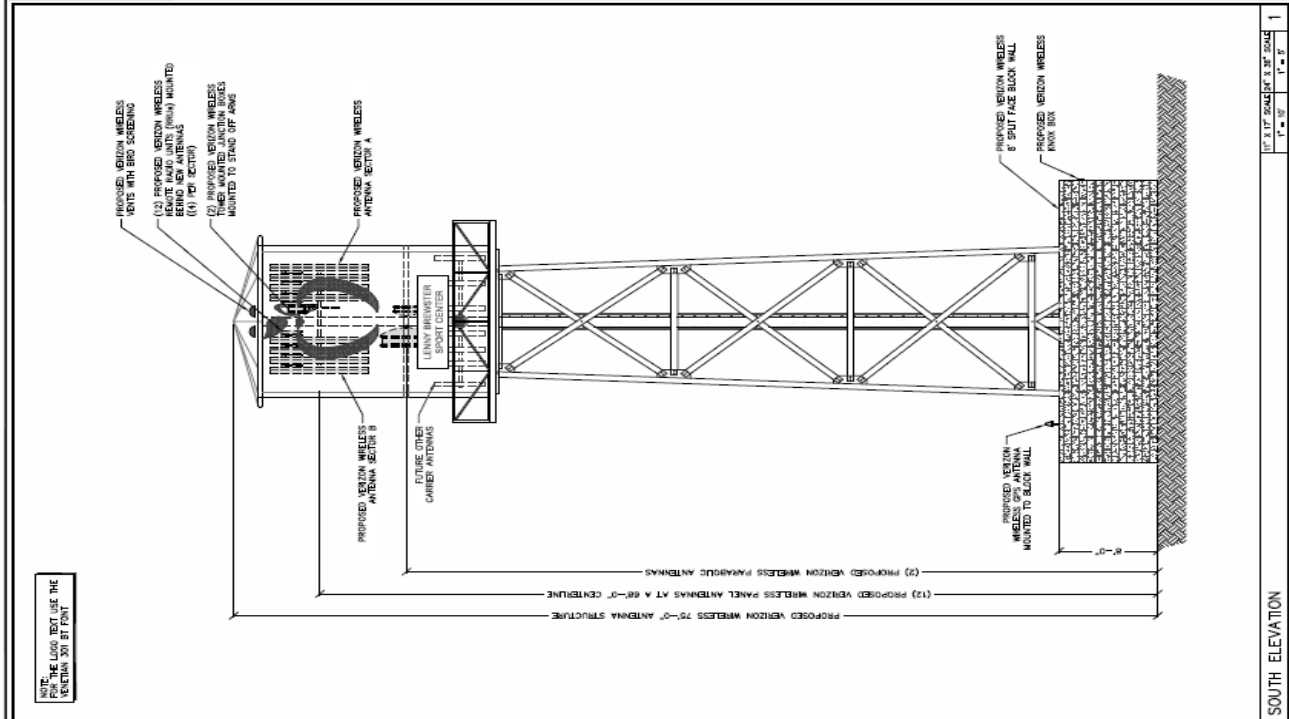
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**Verizon**  
 15505 SAND CANYON AVENUE, D1  
 IRVINE, CALIFORNIA 92618

**MTX-45/B9-19**  
 MCF  
 21024 OTJEE ROAD  
 APPLE VALLEY, CALIFORNIA  
 92307

SHEET TITLE:  
**SOUTH AND EAST ELEVATIONS**

REGION:  
**A4** 1



EAST ELEVATION 1" = 10' 1" = 5' 1" = 5' 1" = 5' 1

ISSUE STATUS		BY
REV	DATE	DESCRIPTION
1	05/17/18	ISSUE ZONING
2	05/24/18	ISSUE ZONING

**SPECTRUM**  
**SPECTRUM SERVICES, INC.**  
 4405 E. AIRPORT DRIVE, SUITE 100  
 ONTARIO, CALIFORNIA 91764  
 TEL: (951) 341-1111  
 FAX: (951) 409-3408

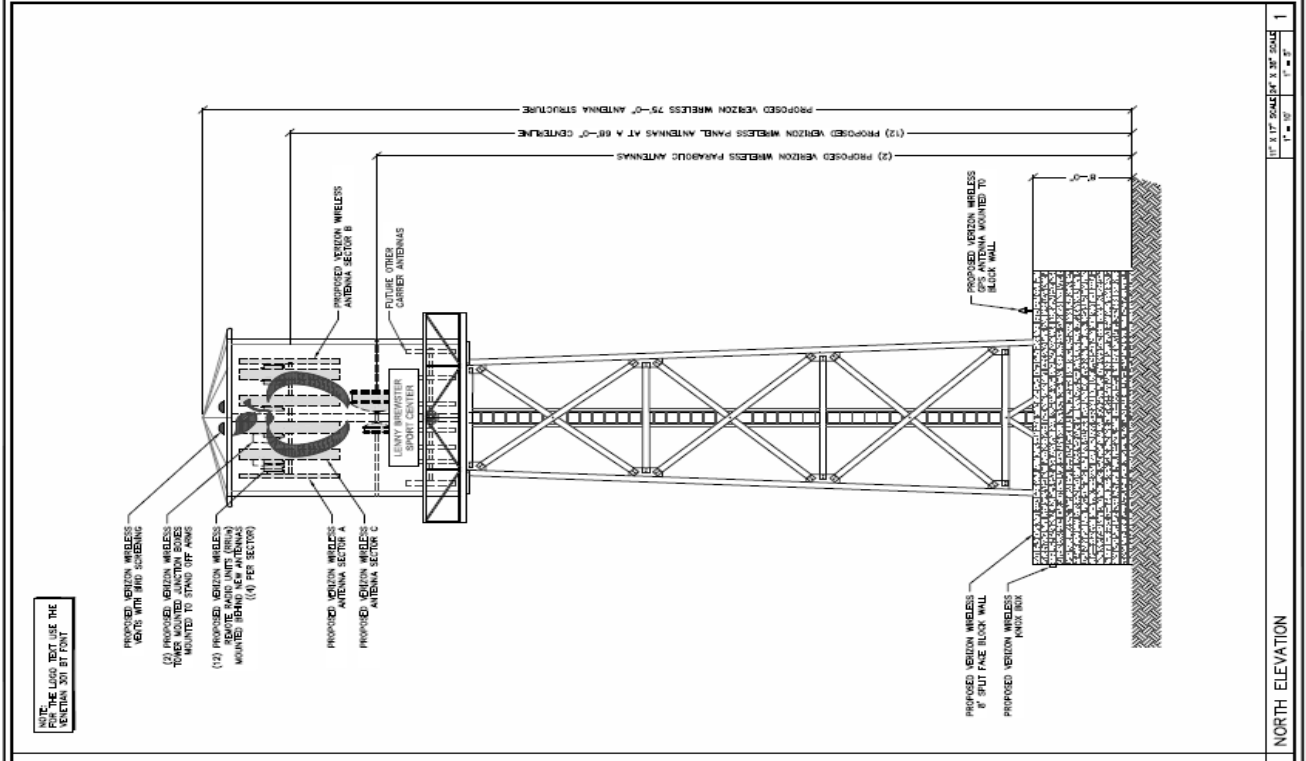
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**Verizon**  
 15505 SAND CANYON AVENUE, D1  
 IRVINE, CALIFORNIA 92618

**VZT WINTUN**  
**MTX-45/B9-C-18**  
**MCE**  
 21024 OTOLE ROAD  
 APPLE VALLEY, CALIFORNIA  
 92307

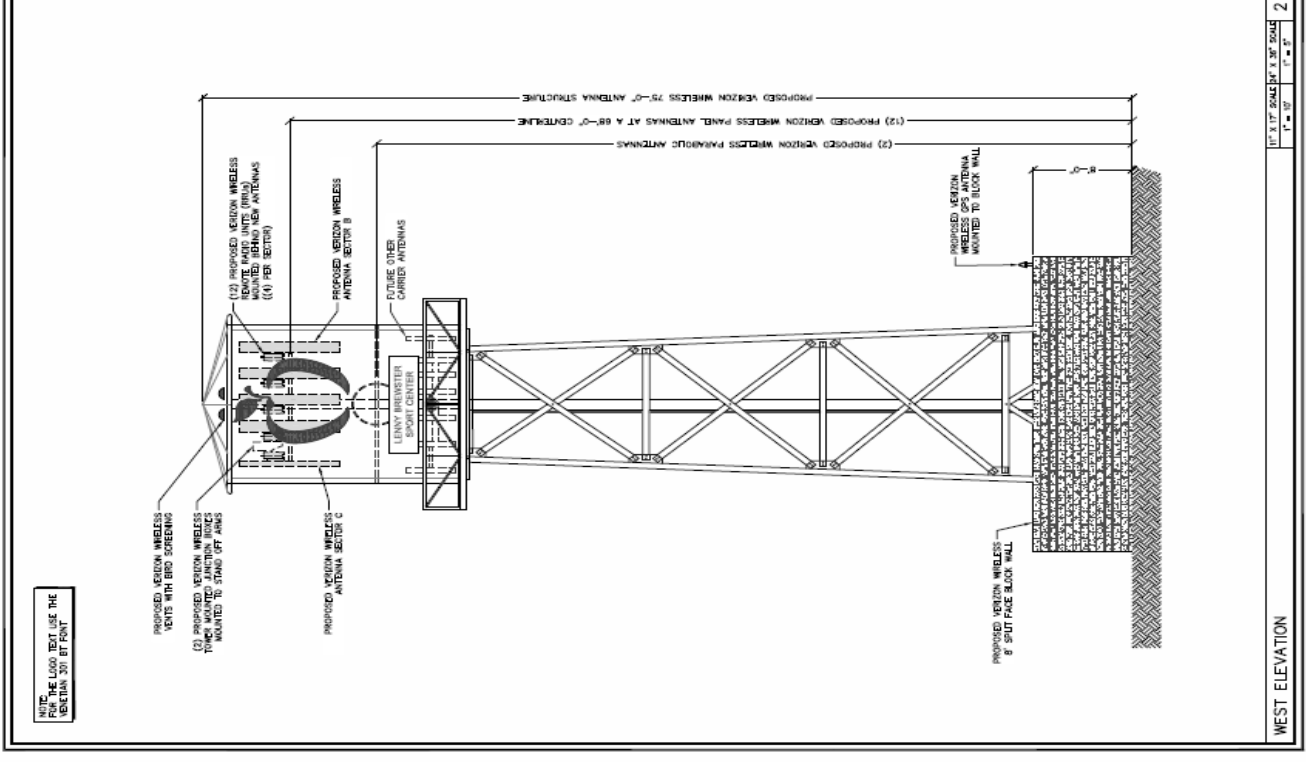
SHEET TITLE  
**NORTH AND WEST ELEVATIONS**

REVISION:  
**A5**      **1**



NOTE: THE LEGS TEXT USE THE VERZINA 301 BT FONT

WEST ELEVATION      1" X 17" SCALE OF 3/8" = 1'-0"      1



NOTE: THE LEGS TEXT USE THE VERZINA 301 BT FONT

WEST ELEVATION      1" X 17" SCALE OF 3/8" = 1'-0"      2

REV.	DATE	DESCRIPTION	BY
1	05/17/18	REV. DRAWING	D.C.
2	06/14/18	REV. DRAWING	R.C.



**SPECTRUM**  
SPECTRUM SERVICES, INC.  
4000 SAND CANYON DRIVE, 100  
RIVINE, CALIFORNIA 92515  
PHONE: (951) 458-8441  
FAX: (951) 458-8468

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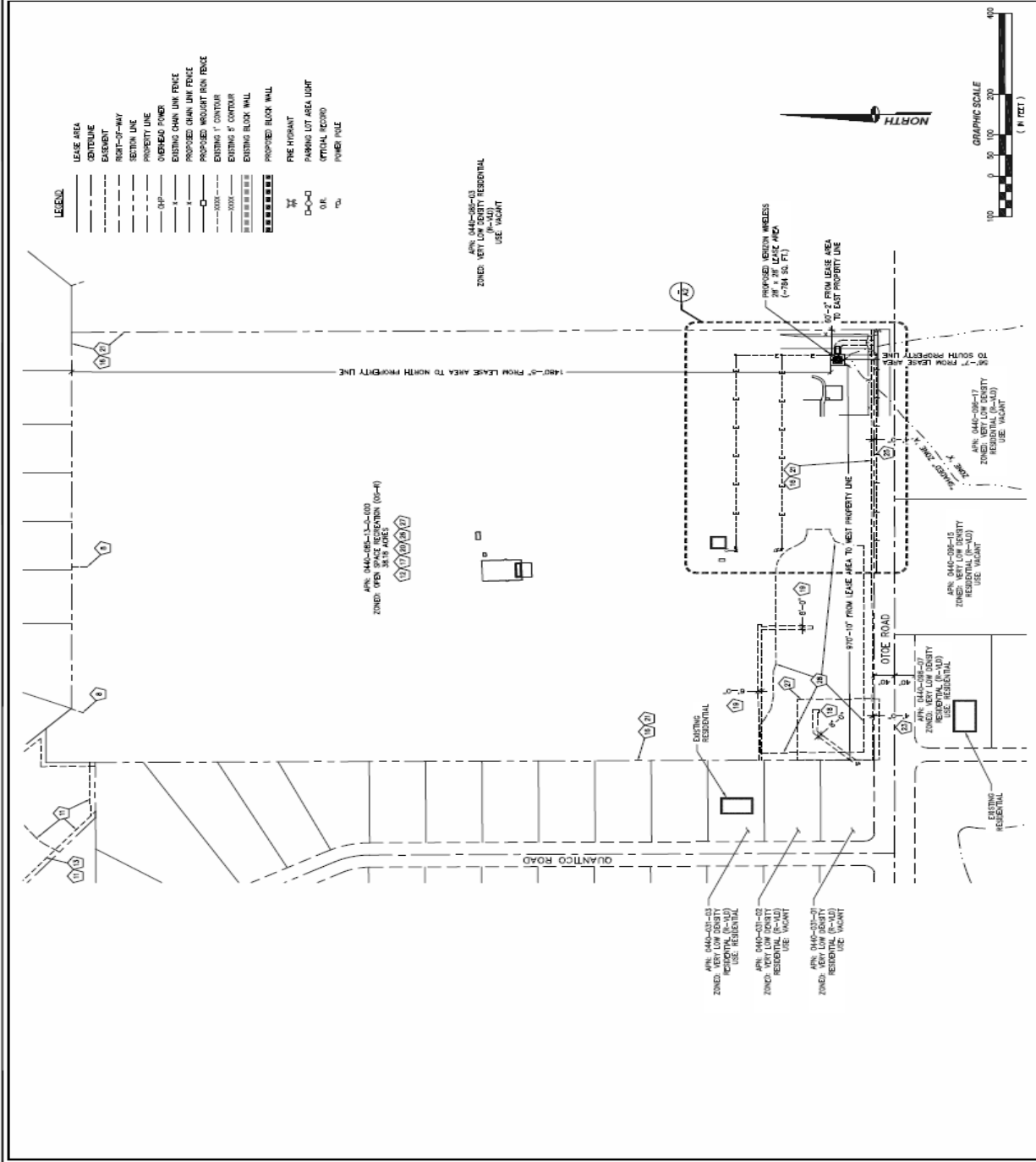


**Verizon**  
15505 SAND CANYON AVENUE, D1  
RIVINE, CALIFORNIA 92515

**VZT WINTUN**  
**MTX-45/BSO-19**  
**MOSE**  
21024 OTOLE ROAD  
APPLE VALLEY, CALIFORNIA  
92307

**SHEET TITLE**  
**SITE PLAN**

**REVISION:**  
**A1 1**



**1" = 100'**  
**DATE: 05-17-2018**  
**SCALE: 1" = 100'**  
**SITE PLAN**