

C-22663

CITY OF MINNEAPOLIS

SITE LEASE AGREEMENT

FOR

PERSONAL
COMMUNICATION
SERVICES EQUIPMENT

SAINT ANTHONY MUNICIPAL PARKING RAMP
201 2nd Avenue S.E.

MPLS. CITY¹ FINANCE DEPT. COPY
CONTRACT C-22663

RETURN WITH ORIGINAL SIGNATURES

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT (hereinafter "Lease"), made this First day of _____, 2005 between City of Minneapolis (hereinafter "Landlord"), and VoiceStream Minneapolis, Inc., a Delaware corporation, d/b/a T-Mobile (hereinafter "Tenant")

For good and valuable consideration, the parties agree as follows:

1. **Leased Area.** Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord a portion of the Landlord's Saint Anthony Municipal Parking Ramp (hereinafter "Property"), located at 201 2nd Ave. S.E. in the City of Minneapolis, County of Hennepin, State of Minnesota, legally described in Exhibit A attached hereto, subject to any and all existing easements. The portion of said Property to be leased is shown in Exhibit B (hereinafter "Premises") also attached hereto and incorporated by reference.
2. **Rent.** (a) Base Rent. As consideration for this Lease, Tenant shall pay Landlord an annual rent (hereinafter "Rent") of \$18,000.00 per year for the first year of this Lease, which amount shall be increased on each anniversary of the Commencement Date (as described below) by a percentage calculated on the basis of changes in the Consumer Price Index (hereinafter "CPI") provided that in no event shall said annual increase in Rent exceed five percent (5%) of the previous year's Rent.

CPI shall mean the "Consumer Price Index" as published by the United States Department of Labor Statistics for All Urban Consumers, Semi-Annual Average, Minneapolis St. Paul, All Items (1984 = 100), not seasonally adjusted. If such index is discontinued, the successor index shall be used, or if there shall be no successor index, such comparable index as mutually agreed upon by the parties. Commencing in the second year of this Lease, to determine the annual Rent increase to be paid by Tenant under a CPI adjustment, the annual Rent for the previous year shall be multiplied by a percentage figure, computed from a fraction, the numerator of which shall be the CPI for the first half of the previous year and the denominator of which shall be the CPI for the corresponding first half of one year earlier. Such fraction shall be converted to a percentage equivalent. The resulting percentage equivalent shall be multiplied by the previous year's Rent. The resulting product will be added to the previous year's Rent to produce a new rate for Rent.

(b) Time of Payment, Taxes. Rent shall be paid without offset or demand in the form a check made out to the "City of Minneapolis" Payment shall be made within fifteen (15) days of the Commencement Date (and on each yearly anniversary of the Commencement Date thereafter) and delivered to the Landlord address specified in Article 17.

This Lease shall commence (hereinafter, "Commencement Date") on the earlier of

January 1, 2006 or such date as Tenant or its contractors, subcontractors, or employees enter Landlord Property to install equipment or utilities, modify the Property for Tenant use, or begin construction of the Premises. In the event the Commencement Date is determined to have commenced with the onset of construction as set forth herein, the parties shall execute, for administrative and record keeping purposes, a memorandum specifying said date.

Tenant shall have the obligation to pay at its own expense on a timely basis all personal property taxes, real property taxes and assessments, or any payment in lieu of taxes which may at any time be assessed and attributable to the Premises, Tenant's Facilities, or any Rent paid.

- 3 **Signing Bonus.** Tenant shall deliver to Landlord with the execution of this Lease a one-time signing bonus in the amount of three thousand dollars (\$3000.00). Said payment shall be in the form of a check made out to the "City of Minneapolis" and delivered to the Landlord address shown in Article 17.

Said bonus shall be delivered in consideration of Tenant right to delay its installation of equipment and payment of Rent as set forth herein.

4. **Governmental Approval Contingency.** Tenant's right to use the Property is made contingent upon its obtaining all the certificates, permits, zoning and other approvals required by any federal, state, or local authority for the installation and use of communications devices. All approvals, studies, drawings, plans or revisions required or resulting from said application process shall be obtained at Tenants expense. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action adversely affecting the status of the Property with respect to the approvals required of Tenant.

Before obtaining a building permit, Tenant must provide to Landlord the radio/telephone power levels and frequencies to be used in the proposed Tenant Facilities. If the Landlord determines there is a potential for interference with City of Minneapolis communications equipment that cannot be reasonably remedied without undue prejudice to Landlord Property or its communications equipment, Landlord may terminate this Lease with no further obligation to Tenant and without any further obligation or liability of Tenant to Landlord.

- 5 **Terms and Renewals.** The initial term ("Initial Term") of this Lease shall commence with the Commencement Date and end five calendar years after the same. Subject to the terms and conditions of this Lease, Tenant shall have the right to extend this Lease for four (4) additional renewal periods of five (5) years (hereinafter "Renewal Term") commencing at the expiration of the Initial Term. Said renewal shall be deemed automatic unless Tenant provides Landlord written notice of Tenant's intention not to

renew at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term provided Landlord can elect not to renew the term of this Lease for the third (3rd) or fourth (4th) Renewal Term by providing written notice of such intention to Tenant at least one hundred eighty (180) days prior to the expiration of the third (3rd) or fourth (4th) Renewal Term. Said Landlord right to not renew shall be exercised with no obligation to Tenant for loss of use, loss of business, or relocation costs.

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Tenant's Use.

(a) Tenant has the right to install twelve (12) transmitting/ receiving antenna on the Premises. Said right shall also include the erection, maintenance, and operation of a telephone communications facility on the Premises as well as any utility lines, transmission cables [(up to two (2) per antenna, for a total of twenty-four (24)], and structures required to support telephone communications (the foregoing are hereinafter "Tenant Facilities") The Tenant Facilities are fully illustrated in Exhibit C, the approval of which shall be obtained pursuant to Article 6.c. hereof. In connection therewith, Tenant has the obligation to do all work necessary to prepare, maintain and alter the Property for Tenant's business operations and to install transmission lines to the antenna.

Tenant shall have the burden of exercising due diligence in conducting its preparatory, maintenance, and alteration activities as contemplated in this Lease or as may be approved by Landlord upon its acceptance of Exhibit C. Said diligence shall include x-raying or similar testing of proposed concrete penetrations in floor slabs or walls pursuant to core drilling, bolt mounting, or anchoring. Tenant shall have the obligation to repair any damaged concrete rebar or post tensioned cables due to its drilling activities.

With the exception of the area constituting the Premises, Tenant's right to use the Property shall be non-exclusive, and Landlord specifically reserves the right to allow its Property to be used by other parties and to make additions, deletions, or modifications to its own facilities thereon.

(b) User Priority. Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenants use shall be subordinated accordingly:

1. Landlord as an entity serving a public purpose;
2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the Landlord;
3. Other governmental agencies where use is not related to public safety.

(c) Purposes. Prior to installing its Tenant Facilities, Tenant shall submit to Landlord final technical descriptions, drawings, and construction plans including any alterations made necessary for Tenant use of the Property. Landlord shall have 30 days to review and approve all proposed drawings and plans affecting the Property or its operations. If

notice of objection is not received by Tenant within said 30 days, all plans and specifications shall be deemed approved by Landlord. Upon completion of any installations or alterations as provided for herein, Tenant shall provide Landlord with as-built drawings of the equipment and improvements installed or altered on the Premises. Said drawings and as-builts shall be accompanied by a complete and detailed inventory of all equipment and personal property actually placed on the Premises by Tenant.

(d) Construction. Any contractors that Tenant proposes to use to construct and install Tenant Facilities shall be subject to Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Any ensuing contract shall include the requirement that the Landlord be named as an additional insured on the Tenant's Contractor's Protective Liability Policy, General Liability and Property Insurance, and shall be in form and amount reasonably acceptable to Landlord. Evidence of such coverage shall be submitted to the Landlord prior to entry of any Tenant contractor onto the Property. The contractor(s) shall also be required to provide a performance bond and payment bond in conformance with Minnesota Statutes, Sec. 574.26. Any contractor so selected shall be licensed and bonded under all applicable laws and regulations. Property insurance shall include waiver of subrogation provisions in favor of Landlord.

Tenant will not allow any mechanics' or workmen's liens to be placed on the Property as a result of Tenant's work on the Premises or Property.

(e) Operation. Tenant shall have the obligation, at its sole cost and expense, to operate its Tenant Facilities in accordance with good engineering practices and all applicable FCC rules and regulations.

Tenant shall have the obligation to conduct its installation, operational, maintenance, repair and alteration activities in a manner so as to not interfere with Landlord use of its Property as an automobile parking facility. In the event Tenant determines it cannot reasonably meet the requirements of this paragraph it shall provide 24 hours notice to Landlord specifying the time, date and place (on the Property) of said activities.

Throughout the term of this Lease, Tenant shall promptly notify Landlord of any damage to the Property or the Premises caused directly or indirectly by Tenant exercise of this Lease. Tenant shall, with Landlord consent, commence and diligently pursue the repair of said damage. In the event Landlord determines in its discretion to repair said damage, Landlord shall have the right to commence such repairs and restore its Property or the Premises to its original condition and bill Tenant for its expenses in the same.

Tenant shall comply at all times with all Historic or Heritage Preservation requirements occurring with its use and occupancy of the Property and Premises.

(f) Maintenance and Improvement Landlord is under no obligation to provide any

service or incur any cost allowing Tenant to carry out its activities as set forth herein. All of Tenant's construction, installation, maintenance, and operational work shall be performed at Tenant's sole cost and expense.

In the event Tenant requests that the Landlord provide maintenance or improvements to the Premises or Property, Landlord shall have the option but not the duty to provide the same provided that Tenant shall reimburse the Landlord for any cost it incurs. In the event an unforeseen Landlord lease obligation arises, whether implied or constructed, for Tenant activities, Landlord shall be allowed to bill Tenant for its costs and expenses in providing the same.

Tenant shall keep the Premises in a clean and neat condition throughout the Term hereof and maintain the Premises and Tenant Facilities in the same appearance and condition as the Landlord's Property. Tenant shall be responsible for providing all tools and equipment necessary for its operations on the Premises or Property and shall throughout the Term provide at its own cost: cleaning, trash removal, and recycling of unused materials attributable to its use of the Property.

If Landlord determines during the Initial or any Renewal Term of this Lease, that repairs are necessary to portions of the Premises or to any portion of the Property where (or in close proximity) to Tenant Facilities or appurtenances are located, whether such repair need is routine or due to damages specified in Article 11 hereof, Tenant shall be responsible at its own expense for the temporary relocation and security of the Tenant Facilities while repairs are being made. Tenant shall be responsible for reinstallation of its Tenant Facilities after Landlord repairs are completed.

(g) Replacements and Alterations. In exercising its rights to operate the Tenant Facilities, Tenant shall be allowed to request such reasonable alterations or replacements to the Property or Premises as are necessary to modernize or upgrade its business equipment, provided that any alterations or replacements shall not be made without Landlord's prior consent as set forth in Article 6.c, which consent will not be unreasonably withheld, conditioned, or delayed. Landlord is under no obligation to approve replacements or modifications that interfere with its operation of the Property or affect or impact its structural integrity.

Requests for replacements and alterations to the Premises shall be in writing and accompanied by detailed plans and specifications and working drawings for the proposed alterations or replacements at least thirty (30) days prior to the commencement of any such work. Said alterations or replacements shall not commence until Tenant has received an approval notice from the Landlord. Tenant shall inform Landlord of any contractors to be used in making alterations and provide contractor insurance to the same extent as in Article 6(d). Tenant shall pay all costs for said replacements and alterations on a timely basis.

(h) Expansion. Notwithstanding Tenant rights to alter its equipment, the parties hereto agree Tenant has a right to twelve antenna on Landlord Property as specified in Article 6 (a). No right to add additional antenna, move an existing antenna, or relocate the Tenant Facilities, shall be conferred without the execution of an amendment to this Lease.

(i) Access. Throughout the term of this Lease Landlord shall provide Tenant with reasonable access to the Premises and Property during normally scheduled workdays provided that Landlord (or a designee) requires 24 hours' notice to granting of access to secured portions of Landlord Property. If access to secured areas of Landlord Property is required at any time other than during the scheduled Landlord workday, Tenant shall reimburse the Landlord for its costs related to the gaining of such access. Failure to grant timely access shall not be deemed a material breach of this Lease. This promise to provide access shall not be construed to require removal of snow from or near the Premises or to otherwise operate, modify, alter or maintain the Property to provide access.

To facilitate access to the Premises, Tenant, throughout the term of this Lease, shall be issued and allowed to use one parking access card for use on the Property for such time and duration that Landlord operates and maintains a parking card access system for the Property. In the event Tenant loses said access card, Tenant shall be authorized to procure a replacement card at a reasonable cost from the Landlord. In the event a new parking access control system is put in place, Tenant shall be issued a new access card when said system is functional and operational.

Tenant shall provide a 24-hour telephone or radio contact for Landlord in the event of fire, damage, or catastrophe or act of God affecting Tenant Facilities. Landlord shall provide a 24 telephone or radio contact for Tenant in the event Tenant requires immediate access to the Premises for emergency purposes.

(j) Utilities. Tenant shall have the obligation at its own expense to install and supply utilities, including telephones, telephone communication lines, if any, and electricity for its Tenant Facilities. All utilities shall be installed at Tenant's sole cost and expense, separately metered, billed to Tenant, and promptly paid. Landlord shall not purposely delay or take any unreasonable or unlawful steps which would prohibit Tenant from obtaining land use permits affecting Landlord Property necessary to install and supply utilities pursuant to this Lease.

7. Emergency Facilities. In the event of a natural or man made disaster, in order to protect the health, welfare, and safety of the community, or during periods when Landlord is repairing the Property pursuant to Article 6(f) above, Tenant may, with prior written consent from the Landlord's Manager of Off Street Parking erect additional facilities or install additional equipment on a temporary basis on the Property to assure continuation of communications services. Such and installation shall be in such place on the Property

and for such duration as the Manager of Off Street Parking may direct. Tenant agrees to pay any Landlord costs, including an increase in Rent due to the granting of such a right

8. **Landlord Warranty** Landlord does not warrant that the Tenant's use of the Premises will be free from interruptions caused by breakdowns, maintenance, repairs, structural failures, roof damage, leakage, strikes, shortages, stoppages, accidents, natural disaster, terrorist act, act of war, or acts of God beyond reasonable control of the Landlord. Tenant shall bear the responsibility and expense of repairing and restoring its Tenant Facilities and Premises in the event its use of the Property is interrupted as set forth herein.

The Landlord makes no warranty to the condition or safety of its Property for Tenant's employees, agents or independent contractors to conduct studies, install, operate, or remove its equipment, any such determination being the sole responsibility of Tenant.

Tenant shall be responsible for the security of Tenant Facilities on the Premises or Property.

Landlord makes no promise to provide on-site staff for operation of its Property or for Tenant needs except as expressly set forth herein.

9. **Defense and Indemnification.**

(a) Tenant agrees to defend, indemnify and hold harmless Landlord and its officers, employees, agents, and representatives, hereinafter "Indemnified Parties", from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, judgments or liabilities, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by the Indemnified Parties or for which any of the Indemnified Parties may be liable as a result of the performance of this Lease, or arising from Tenant's use, installation or maintenance of its Tenant Facilities or its use or maintenance of the Property or easements for access thereto, except those which arise solely from the negligence, willful misconduct of Landlord, its employees, agents, or contractors. Tenant shall defend all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of Tenant Facilities, equipment and related facilities on the Property.

(b) **Hazardous Materials.** Tenant shall be solely responsible for and shall defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including reasonable attorneys fees and costs, arising out of or in connection with the cleanup or restoration of the Premises associated with the Tenants' use of Hazardous Materials, if any. For purposes of this Lease, Hazardous Materials shall include, without limitation, asbestos, fuel, or any hazardous substance, waste, or material as defined in any federal, state, or local environmental or safety law or regulations including, but not limited to, CERCLA.

Tenant represents and warrants that it will not generate, store, or dispose of, transport to or over the Premises, any Hazardous Materials unless Tenant specifically informs Landlord thereof in writing twenty-four (24) hours prior to such storage, disposal or transport, or otherwise as soon as Tenant becomes aware of the existence of Hazardous Materials on the Premises. The only exception shall be those batteries used and contained within Tenant's base station. The obligations of this Article 9 shall survive the expiration or other termination of this Lease.

10. **Insurance.** (a) **Workers Compensation.** The Tenant must maintain Workers Compensation Insurance in compliance with all applicable statutes.

(b) **Commercial General Liability.** The Tenant must maintain an occurrence form comprehensive general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage-broad form, and personal injury, for the hazards of Premises/Operation, broad form contractual liability, independent contractors, and products/completed operations.

The Tenant must maintain aforementioned comprehensive general liability coverage with limits of liability not less than \$1,000,000 each occurrence; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate, and \$2,000,000 products and completed operations aggregate. These limits may be satisfied by the comprehensive general liability coverage or in combination with an umbrella or excess liability policy, provided coverage afforded by the umbrella or excess policy are no less than the underlying comprehensive general liability coverage's.

Tenant will maintain Completed Operations coverage for a minimum of two years after the construction is completed.

(c) **Tenant Property Insurance.** The Tenant must keep in force for the duration of this Lease a policy covering damages to the Tenant Facilities and other Tenant property on the Property or Premises if any. The amount of coverage shall be sufficient to replace the damaged property or Tenant Facilities, provide relief for loss of use and comply with any ordinance or requirements of law. Property insurance shall include waiver of subrogation provisions in favor of Landlord.

(d) **Increase in Insurance Limits or Type.** Two years after the Commencement Date and every two years thereafter or after any natural or man made disaster including terrorist attack, Landlord may change the type of insurance protection or increase the insurance limits required by this Lease. Said Landlord changes or increases shall reflect types or limits of insurance generally accepted in the insurance industry or of similar personal communication equipment leases, and in no event will Tenant be allowed to maintain lower levels or fewer types of insurance than are required by law.

No use of the Premises shall be made or permitted of the Premises or any part thereof, and no acts will be done, which will violate, make inoperative, or increase the customary rate of any standard insurance policy at any time held by or in any way for the benefit of Landlord pursuant to any provision of this Lease.

(e) Additional Insured - Certificate of Insurance. The Tenant shall provide, prior to tenancy, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A or better), licensed to do business in the state of Minnesota, which includes all coverages required in this Article 10. Tenant will name the Landlord as an Additional Insured on the General Liability Policy. The Certificate(s) shall also provide that coverage may not be canceled or not renewed without thirty (30) days prior written notice to the Landlord.

(f) Deductibles. Tenant or its contractors shall be responsible for insurance deductibles as may be obtained by Tenant or its contractors in their discretion.

11. **Damage or Destruction**. In the event the Property suffers damage or Landlord discovers Property deterioration requiring repair, and Landlord does not exercise its right of termination pursuant to Article 12(a)(v) hereof, Landlord shall notify Tenant (within 60 days) of its decision to continue its use of the Property and provide Tenant an estimate of the time required to commence said repairs and restore its Property.

Upon receipt of Landlord notice of damage and the intent to repair the same, Tenant shall have the option with 30 days notice to Landlord, of terminating this Lease. If the Tenant continues this Lease it shall have the obligation of cooperating, including relocation of Tenant Facilities at its own cost, with Landlord in completing its repairs. Tenant shall have the obligation at its sole cost and expense of repairing any damage, if any, to the Premises and its Tenant Facilities which may have occurred with damage to or deterioration of the Property.

In the event Landlord or Tenant terminates this Lease as set forth in this Article 11, Landlord shall have the obligation of returning a prorated share of any yearly Rent paid, said proration to be based on the period of time from the date of Tenant termination to the end of the then current year. Tenant shall be granted a reasonable period of time to remove its Tenant Facilities.

12. **Lease Termination**.

(a) Except as otherwise provided herein, this Lease may be terminated by either party with written notice to the other party as follows:

- (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of giving written notice of default to

the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof) unless such default may not reasonably be cured within a 60-day period in which case, this Lease may not be terminated if the defaulting party commences action to cure the default within such 60 day period and proceeds with due diligence to fully cure the default;

(ii) by Tenant with no less than sixty (60) days notice to Landlord for cause if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of its Tenant Facilities or Tenant's business;

(iii) by Tenant with no less than sixty (60) days notice to Landlord for cause if the Property is or becomes unacceptable for technological or economic reasons;

(iv) intentionally blank

(v) by Landlord acting in its discretion with no less than sixty (60) days written notice to Tenant if the Property is damaged by fire, natural disaster, or deterioration which in Landlord's discretion cannot be repaired without undue cost, or accident; or is deemed to be unsafe;

(vi) by Landlord with 180 days notice to Tenant if Landlord determines that a potential user with a higher priority under Article 6(b) above cannot find another adequate location;

(vii) by Landlord if it reasonably determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, after a public hearing before Landlord's Council

(b) Notice of Termination. The parties shall give notice of termination in writing in accordance with Article 17. All Rent paid for the Lease prior to said termination date shall be retained by Landlord unless terminated due to a Landlord default.

(c) Tenants Liability for Early Termination. If Landlord terminates this Lease as a result of any default by Tenant, Tenant shall pay to Landlord as liquidated damages for early termination, 100% of the Rent for the year in which Lease terminates, unless the Lease is terminated during the last year of any term and Tenant has paid Rent for that year. Liquidated damages shall be in addition to any Rent paid or payable with respect to periods during which the Lease has been in effect.

(d) Site Restoration. Within sixty (60) days of the expiration or earlier termination of this Lease, Tenant shall remove its Tenant Facilities and related equipment from the Premises,

repair the Premises and restore the Property to the condition existing on the Commencement Date, normal wear and tear excepted. In the event Tenant property is not removed, it shall be deemed abandoned and become the property of Landlord and Tenant shall have no further right thereto. If the Property is not restored following Tenant termination as set forth herein, Landlord shall have the right to restore its Property and bill Tenant for its expenses in the same. Tenant's obligation to pay such costs shall survive termination of this Lease.

(e) Limitation of Liability. Notwithstanding anything to the contrary in this Lease, in no event will either party be liable to the other party for, or indemnify the other party against, punitive, indirect, incidental, special or consequential damages, including, without limitation, loss of profits, income or business opportunities.

13. **Tenant Interference**

(a) Tenant shall, at its own expense, maintain and operate the Tenant Facilities in a manner suitable to Landlord so as not to conflict with Landlord's use of its Property.

(b) With High Priority Users. If, subsequent to installation, the Tenant Facilities cause unforeseen or impermissible interference with higher priority identified in Article 6(b), Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating the Tenant Facilities and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within 30 days after Tenant received Landlord's written notice, Landlord may at its option terminate this Lease with no further obligation to Tenant.

(c) Interference Study - New Occupants. Upon written notice by Landlord that it has a bona fide request from any other party to lease an area in close proximity to the Premises for purposes of raising a communications antenna, Tenant agrees to provide Landlord, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational on the Premises at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicants frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies, unless the Landlord or other higher priority user requests the use. In that event, the Tenant and all other tenants having antenna facilities on the Property shall pay for the necessary interference studies, pro rata

(d) Interference – New Occupants. Landlord agrees that it will not grant a future lease on the Property to any party who is an equal or lower priority to Tenant as defined in Article 6.b., if such party's use is reasonably anticipated to interfere with Tenants operation of its

Tenant Facilities or would contribute to causing interference with higher priority users. Landlord agrees that it will require any subsequent occupants in the Property of equal or lower priority to Tenant to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this Lease or seek injunctive relief against the interfering occupant, at Tenants expense.

14. **Assignment.** Tenant may not license, assign, sublet or otherwise transfer or encumber Tenant's rights or interests under this Lease or to the Premises without Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed, except as follows:

- Tenant may, without Landlord's consent, assign its interest in the Lease to an affiliate of Tenant or an entity that has merged or consolidated with, or acquired the assets of, Tenant; or
- Tenant may license or sublet all or any portion of the Premises, with Landlord's consent not to be unreasonably withheld or delayed, to any third party for operating the Tenant Facilities, provided that, in such case, Tenant shall pay to Landlord, in addition to Rent, an annual license or sublease fee equal to the greater of one-half the aggregate of annual compensation paid or payable by such licensee or sub-lessee to Tenant. In no event shall payment of such license fee waive or diminish the obligation of Tenant to pay Rent as set forth herein.

The Landlord shall have the right to sell or transfer its Property, or a portion thereof, including this Lease, without Tenant's consent to any person or business entity incorporated to conduct business in the State of Minnesota. Landlord shall be liable with respect to such obligations under this Lease as accrued prior to the date of on which title or right passes to the transferee and transferee shall be liable with respect to and shall be deemed to have assumed such obligations under this Lease as shall accrue from and after the date of transfer and as thereafter accrued during the period of the transferee's ownership. Any such sale or transfer shall be subject to the provisions of this Lease and Tenant and Landlord's assignee or transferee shall continue to comply with the provisions of this Lease.

15. **Condemnation.** In the event the whole of the Property is taken by eminent domain, this Lease shall terminate as of the date title to the Property vests in the condemning authority. In the event a portion of the Property is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days written notice to the other party. Tenant shall not be entitled to any portion of the reward paid a taking under the power of eminent domain and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in

value of the leasehold or to the fee of the Premises, shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in removing its equipment, personal property, or such items as constitute the Tenant Facilities.

16. **Enforcement and Attorneys Fees.** In the event that either party to this Lease shall bring a claim to enforce any rights hereunder, the prevailing party shall be entitled to recover costs and reasonable attorneys fees incurred as a result of such claim.

17. **Notices.** All notices, payments, insurance documents, Tenant plan or as-built submissions, or requests for alterations or services as specified hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by a nationally recognized courier service that provides proof of delivery, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

If to Landlord, to: Manager of Lots and Ramps
 Hawthorne Transportation Center, Room 100
 33 Ninth Street S.
 Minneapolis, Min 55403.

If to Tenant, to: VoiceStream Minneapolis, Inc.
 c/o T-Mobile
 8550 W. Bryn Mawr Ave., Suite 100
 Chicago, IL 60631
 Attn: Lease Administration (Mpls)
 W/ a copy to: Legal Department

With a copy to: T-Mobile
 12920 SE 38th Street
 Bellevue, WA 98006
 Attn: PCS Lease Administration

18. **Authority.** Each of the individuals executing this Lease on behalf of the Tenant or the Landlord represents to the other party that such individual is authorized to do so by requisite action of the party to this Lease.

19. **Binding Effect.** This Lease shall run with the Property and extends to and binds the heirs, personal representatives, successors and assigns of the parties hereto.

20. **Complete Lease; Amendments.** This Lease constitutes the entire agreement and

understanding of the parties and supersedes all offers, negotiations, and other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

21. **Governing Law.** This Lease shall be construed in accordance with the laws of the State of Minnesota.
22. **Severability.** If any term of this Lease is found be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
23. **Memorandum** Upon the request of either party, the parties agree to promptly execute and deliver a recordable Memorandum of this Lease in a form acceptable to both parties which may be recorded by the party requesting the Memorandum of Lease.
24. **Waiver** No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

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

CITY OF MINNEAPOLIS

VOICES TREAM MINNEAPOLIS,
INC.,d/b/a T-MOBILE

Countersigned:
Finance Officer

Charles J. Wood (Acting)

By:

Hossein Sepehr

Its: Director of Engineering and Operations

By

T. Llewellyn
Director of Public Works

By

B. A. T. M.
Approved as to Form
Assistant City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 9th day of November, 2005, before me appeared
Hossein Sepehr (name) and _____
(name) to me personally known, who, being by me duly sworn, did say that they are
respectively the Director of Engineering's Operations (title) and _____ (title)
of Voicestream Minneapolis LLC, the corporation described in the foregoing instrument,
and who executed the instrument on behalf of the corporation by authority of its Board of
Directors; and acknowledged the instrument to be the free act and deed of the corporation.

Susan Mae Streets
Notary Public
Susan Mae Streets

My commission expires on:

January 31, 2010

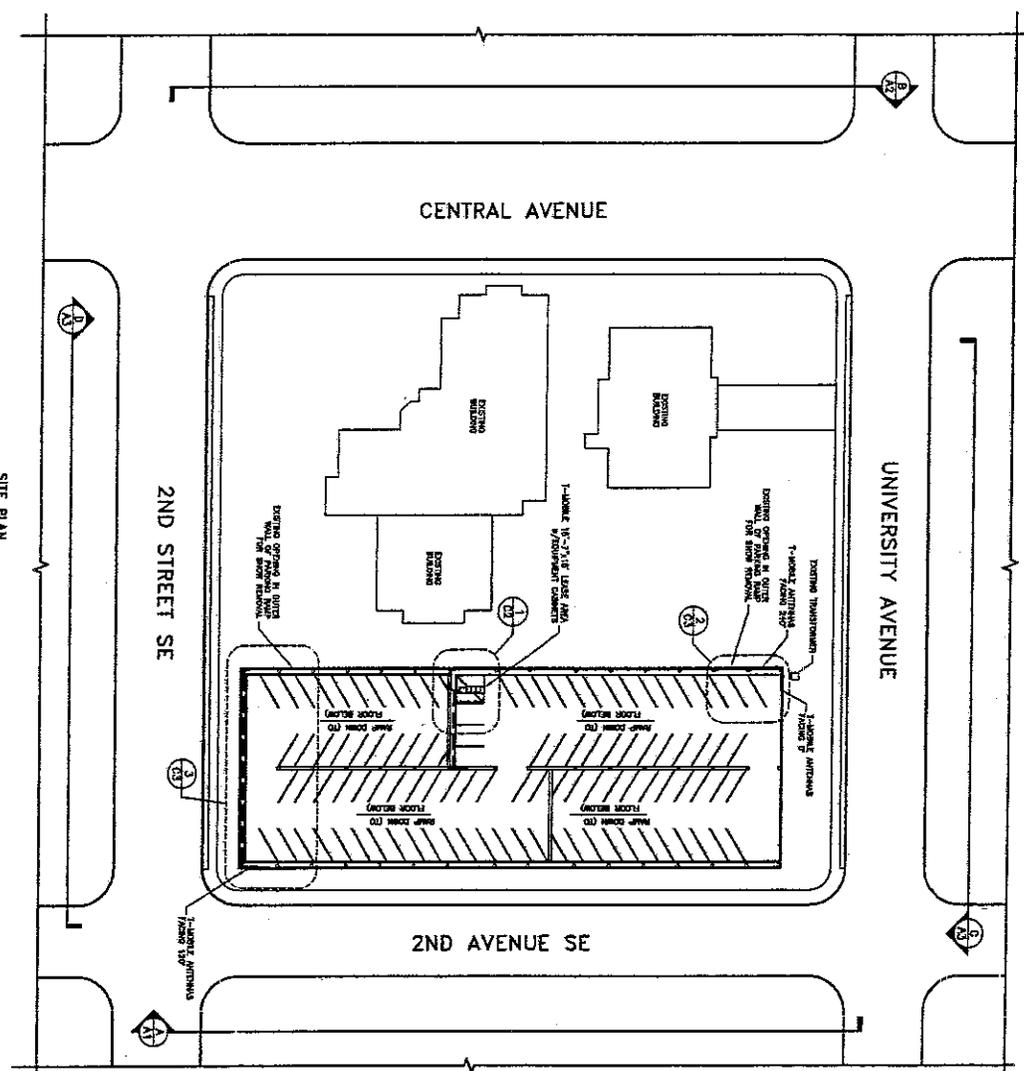
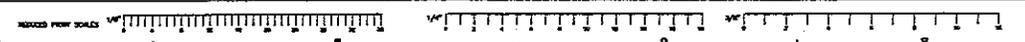


EXHIBIT A: LEGAL DESCRIPTION

Block 038 of St. Anthony Falls Lots 1, 2, 9, 10 and that part of SEly 36 ft of Lot 3 lying SWly of NEly 85 ft thof also SEly 8 ft of NEly 85 ft of Lot 3

Hennepin County, Minnesota

EXHIBIT B PREMISES



NO.	DATE	REVISIONS
1	1/1/00	ISSUED FOR CONSTRUCTION
2	1/1/00	CHANGES PER CITY OF MINNEAPOLIS - FINAL REVIEW

T-Mobile
MINNEAPOLIS MARKET

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF T-MOBILE. ANY REVISIONS TO THESE PLANS AND SPECIFICATIONS SHALL BE MADE BY T-MOBILE. NO PART OF THESE PLANS AND SPECIFICATIONS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF T-MOBILE.

I hereby certify that the above specifications, or report thereon, were prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer in the State of Minnesota.

PROJECT NO. ST. ANTHONY MAIN MUNICIPAL RAMP SITE PLAN	DRAWN BY C. MILLER	DATE 8/4/00
SCALE AS SHOWN	CHECKED BY E. MILLER	DATE 8/4/00
PROJECT LOCATION 128 UNIVERSITY AVE SE MINNEAPOLIS, MINNESOTA	DRAWN BY C. MILLER	DATE 8/4/00

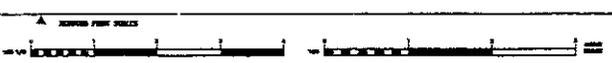
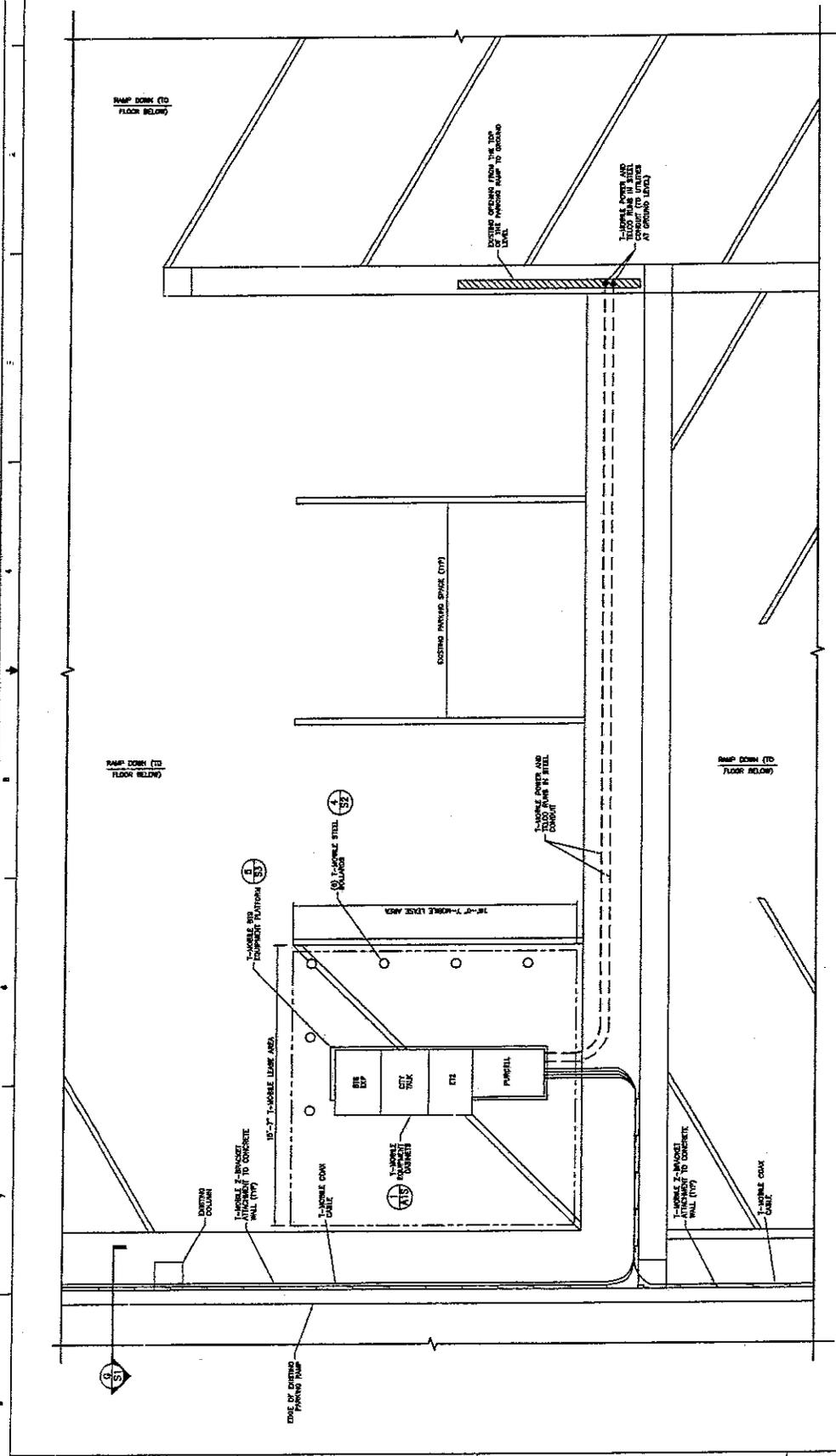


EXHIBIT C: TENANT FACILITIES



1
2
EQUIPMENT PLAN VIEW
SCALE: 1/8" = 1'-0"

NO.	DATE	REVISIONS	BY	APPROVED BY	DATE	REVISIONS
1	11/19/88	ISSUED FOR CONSTRUCTION				
2	11/19/88	CHANGE PER CITY OF MINNEAPOLIS - PUBLIC WORKS				

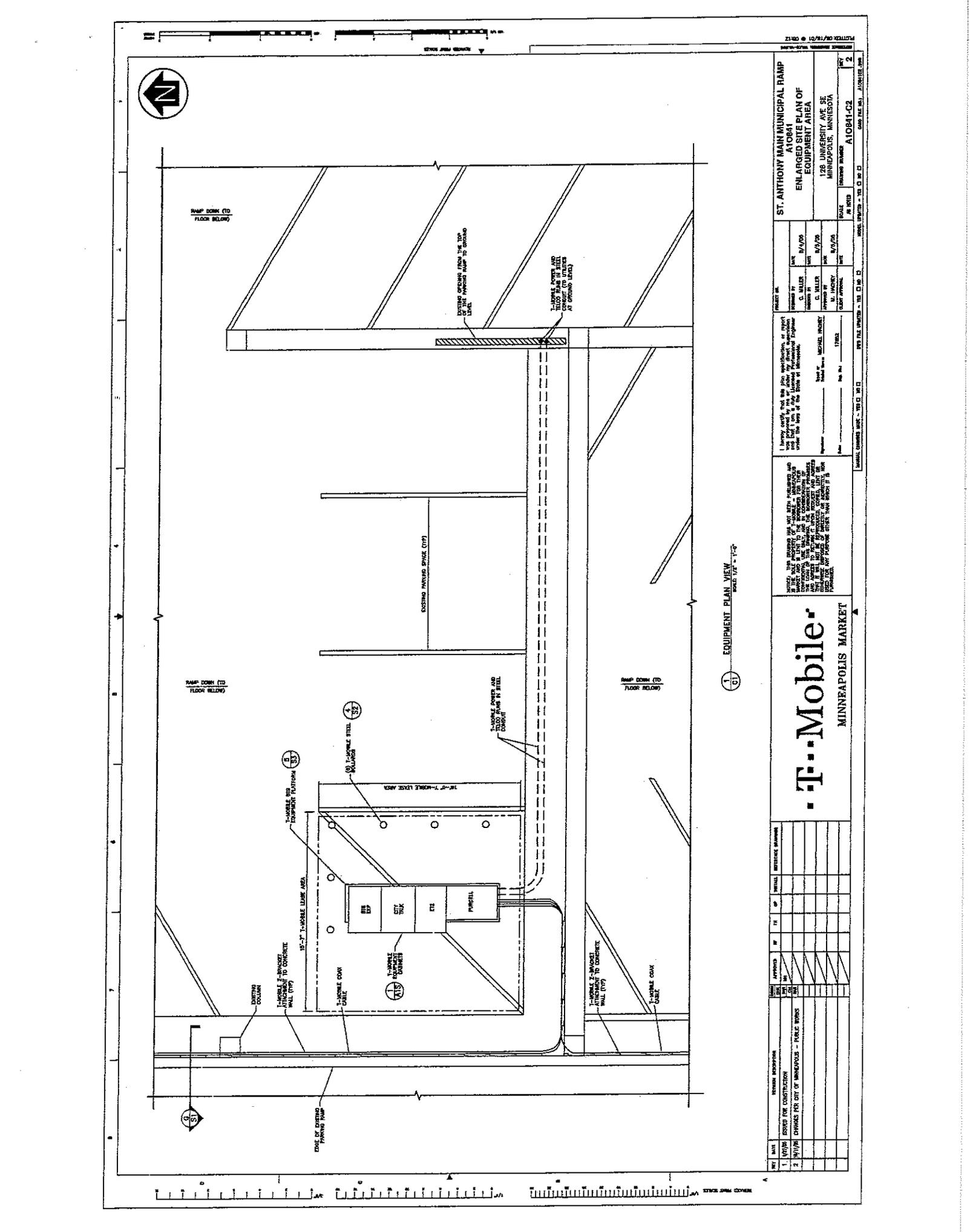
T-Mobile
MINNEAPOLIS MARKET

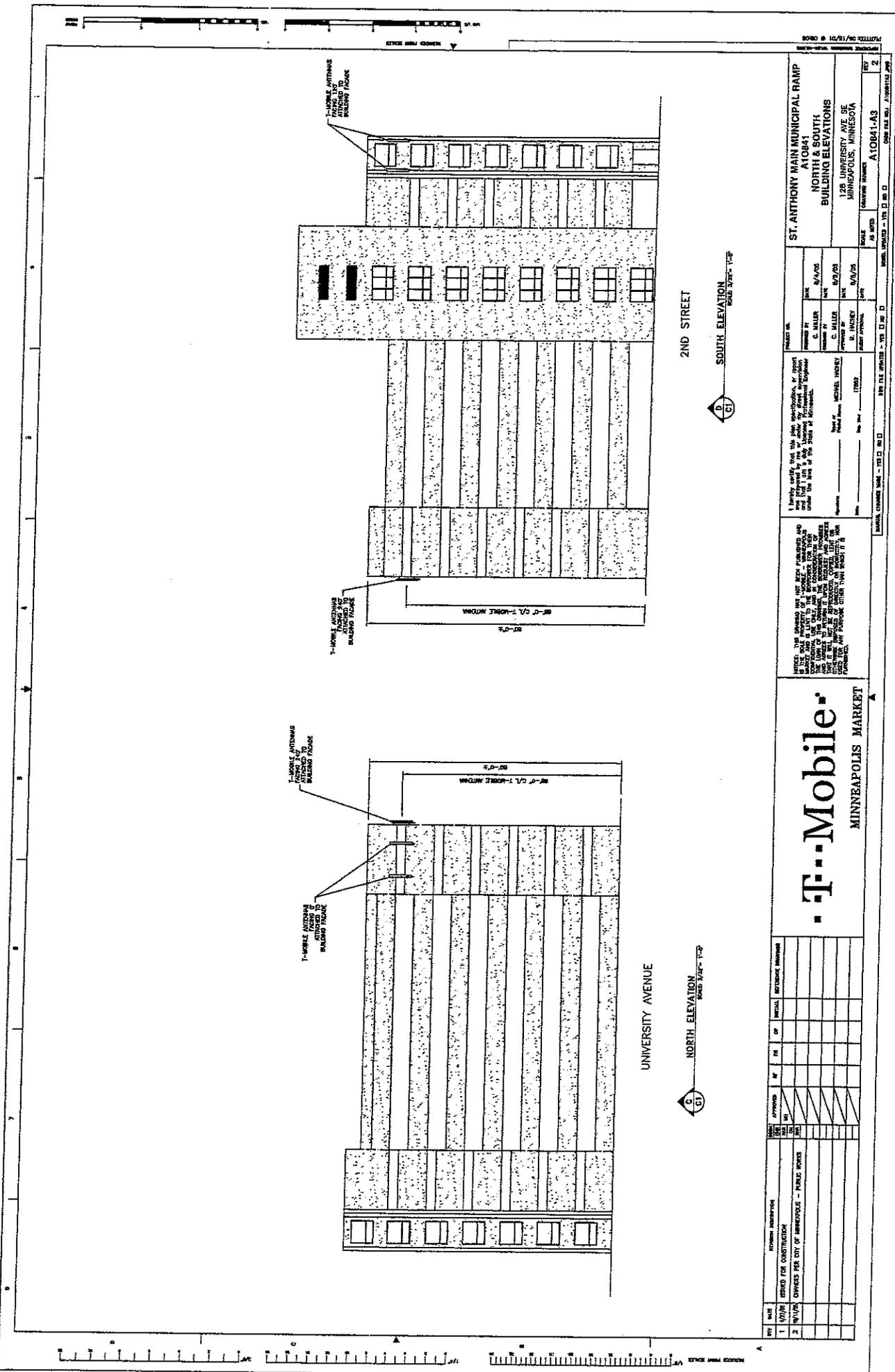
I hereby certify that the site plan, specifications, of this work prepared by me or under my direct supervision and under the laws of the State of Minnesota.

Author: **C. MILLER** Date: **11/19/88**
 Title: **PROJECT ARCHITECT**
 Firm: **ST. ANTHONY MAIN MUNICIPAL RAMP**

ST. ANTHONY MAIN MUNICIPAL RAMP
A10841
ENLARGED SITE PLAN OF
EQUIPMENT AREA
 185 UNIVERSITY AVE. SE
 MINNEAPOLIS, MINNESOTA

DATE: 11/19/88
 DRAWN BY: C. MILLER
 CHECKED BY: C. MILLER
 SCALE: AS SHOWN
 SHEET NO: 2
 TOTAL SHEETS: 2





ST. ANTHONY MAIN MUNICIPAL RAMP
 A10841
 NORTH & SOUTH
 BUILDING ELEVATIONS
 126 UNIVERSITY AVE SE
 MINNEAPOLIS, MINNESOTA

DATE: 8/11/05
 DRAWN BY: C. MILLER
 CHECKED BY: M. JARNEY
 SCALE: AS SHOWN
 SHEET NO.: A10841-A3
 REV: 2

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Signature: MICHAEL JARNEY
 Title: Professional Engineer
 License No.: 17800

NOTICE: THIS DRAWING HAS NOT BEEN PUBLISHED AND IS NOT TO BE USED FOR ANY OTHER PROJECTS WITHOUT THE WRITTEN CONSENT OF THE ENGINEER. THE USER OF THIS DRAWING IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ENGINEER ASSUMES NO LIABILITY FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS DRAWING FOR ANY PURPOSE OTHER THAN THAT INTENDED BY THE ENGINEER.

NO.	DATE	REVISION	BY	CHKD.	APP'D.	DATE	DESCRIPTION
1	1/27/04	ISSUED FOR CONSTRUCTION					
2	7/11/04	CHANGES PER CITY OF MINNEAPOLIS - PUBLIC WORKS					

T-Mobile
 MINNEAPOLIS MARKET

2ND STREET
 SOUTH ELEVATION
 ROAD SCALE: 1"=20'

UNIVERSITY AVENUE
 NORTH ELEVATION
 ROAD SCALE: 1"=20'

C-22663

Memorandum
Of
Lease

MPLS. CITY FINANCE DEPT. COPY

CONTRACT # C-22663

Site Number:
Site Name:
Market:

A100841
St Anthony Main
Minneapolis

RETURN WITH ORIGINAL SIGNATURES

Memorandum of Lease

Assessor's Parcel Number: 23-029-24-13-0075

Between the City of Minneapolis ("Landlord") and VoiceStream Minneapolis, Inc. ("Tenant")

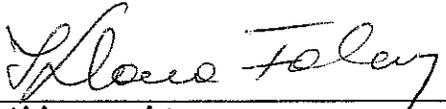
A Site Lease Agreement (the "Lease") by and between the City of Minneapolis, a municipality ("Landlord") and VoiceStream Minneapolis, Inc., a Delaware corporation ("Tenant") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

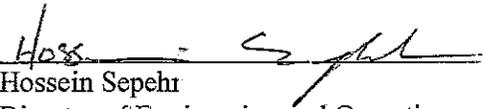
The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for four (4) additional and successive five-year terms...

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: City of Minneapolis

By: 
Printed Name: Klara Fabry
Its: Director of Public Works
Date: 12-20-05

TENANT: Voice Stream Minneapolis, Inc.

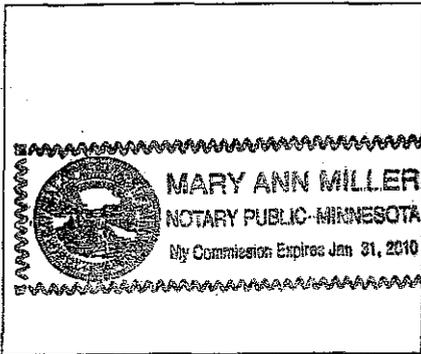
By: 
Printed Name: Hossein Sepehr
Its: Director of Engineering and Operations
Date: 11-08-05

[Notary block for Landlord]

STATE OF Minnesota)
) ss.
COUNTY OF Hennepin)

This instrument was acknowledged before me on December 20, 2005 by Klara Felner, [title] Director of Public Works of City of Minneapolis a Municipality [type of entity], on behalf of said City of Minneapolis [name of entity]

Dated: December 20, 2005



Mary Ann Miller
Notary Public
Print Name Mary Ann Miller
My commission expires January 31, 2010

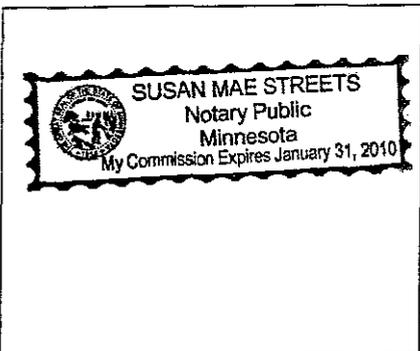
(Use this space for notary stamp/seal)

[Notary block for Tenant]

STATE OF Minnesota)
) ss.
COUNTY OF Hennepin)

I certify that I know or have satisfactory evidence that Hossein Sepehr is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director Engineering And Operations of VoiceStream Minneapolis, Inc , a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 8, 2005



Susan Mae Streets
Notary Public
Print Name Susan Mae Streets
My commission expires January 31, 2010

(Use this space for notary stamp/seal)

Memorandum of Lease EXHIBIT A
Legal Description

The Property is legally described as follows:

LOTS 1 2 9 10 AND THAT PART OF SELY
36 FT OF LOT 3 LYING SWLY OF NELY 85
FT THOF ALSO SELY 8 FT OF NELY 85 FT
OF LOT 3

AUGUST 5, 2005

The following is the complete text of the unpublished summarized ordinance.

ORDINANCE 2005-Or-066
By Colvin Roy
1st & 2nd Readings: 8/5/05

Repealing a portion of Title 18, Chapter 478 of the Minneapolis Code of Ordinances relating to Traffic Code: *Parking, Stopping and Standing*.

The City Council of The City of Minneapolis do ordain as follows:

Section 1 That the following No Parking zones contained in Section 478.730 of the above-entitled ordinance be repealed:

No. 6653 – Ely side of Beard Av S between 46th St W and the dead end southerly (No Parking, 7 am - 9 pm, Monday - Friday, Except by Permit);

No. 3323 – Wly side of Beard Av S between 47th St W and 48th St W (No Parking 9 am to 4 pm, School Days);

No. 3484 – Ely side of Chowen Av S between 47th St W and 48th St W (No Parking, 9 am to 4 pm, School Days);

No. 6486 – Wly side of Chowen Av S between 46th St W and 47th St W (No Parking, 7 am to 9 pm, Monday – Friday, Except by Permit); and

No. 6746 – Wly side of Chowen Av S between 47th St W and 48th St W (No Parking, 7 am to 9 pm, Monday – Friday, Except by Permit).

Adopted 8/5/05.

T&PW - Your Committee, having under consideration City-owned land located at 248 Hennepin Av, now recommends that said land be sold by the method of private sale to the adjacent property owner.

Your Committee further recommends that a public hearing regarding said sale be held on August 9, 2005. (Petn. No. 270580)

Adopted 8/5/05.

Declining to vote - Colvin Roy.

T&PW - Your Committee, having under consideration City-owned land located at 1910 Plymouth Av N, now recommends that said land be sold by the method of private sale to the adjacent property owner.

Your Committee further recommends that a public hearing regarding said sale be held on August 9, 2005 (Petn. No. 270580)

Adopted 8/5/05.

Declining to vote – Colvin Roy

T&PW - Your Committee, having under consideration the Solid Waste and Recycling Business Line for Clean City functions, now recommends the addition of three Full Time Employees (FTEs) to accomplish Clean City activities. No additional appropriation is required.

Your Committee further recommends that the proper City officers prepare an analysis of the effect of the additional FTEs on the 2007 Solid Waste and Recycling Rate Structure.

Adopted 8/5/05

The **TRANSPORTATION & PUBLIC WORKS** and **WAYS & MEANS/BUDGET** Committees submitted the following reports:

T&PW & W&M/Budget - Your Committee recommends that the proper City officers be authorized to negotiate and execute a five-year lease agreement with VoiceStream Minneapolis, Inc. (dba T-Mobile) for the use of space in the St. Anthony Municipal Parking Ramp as a cellular antenna site, commencing January 1, 2006, or with the onset of construction, whichever occurs first.

Adopted 8/5/05.

AUGUST 5, 2005

Xcel Energy/NSP (270579)

Utility Pole: Install one (1) 40'4 pole in alley on 7th Av N behind 701 N 3rd Av, Design #133068.

Utility Pole: Install one (1) 35'4 pole on boulevard at 2815 44th Av N, Design #133843.

Utility Pole: Install one (1) 45'3 pole on boulevard across from 1300 2nd St NE, Service Request #394587.

Utility Pole: Install one (1) 45'4 pole on boulevard at Chicago Av & Washington Av S to serve new load in area.

Utility Pole: Install one (1) 45'4 pole at Fremont Av S and W 29th St, Design #128503.

TRANSPORTATION AND PUBLIC WORKS and WAYS & MEANS/BUDGET (See Rep):

PUBLIC WORKS AND ENGINEERING (270580)

Nextel Agreement: Authorize agreement to receive reimbursement for work performed by City staff.

Critical Parking Area: Ordinances establishing Area No. 11, No Parking, Except by Permit, 6 am to 9 pm, School Days and repealing obsolete zones in area.

248 Hennepin Av: Approve method of private sale of land to adjacent owner and set public hearing for 8/9/2005.

1910 Plymouth Av N: Approve method of private sale of land to adjacent owner and set public hearing for 8/9/2005.

Solid Waste & Recycling Clean City Functions: Authorize addition of 3 full-time employees.

PUBLIC WORKS AND ENGINEERING (270581)

St. Anthony Municipal Parking Ramp: Authorize lease with VoiceStream Minneapolis, Inc. (dba T-Mobile) for space in ramp commencing 1/1/2006, or onset of construction.

Mill Quarter Municipal Ramp: Approve Change Order Nos 1 - 8 and extend contract to 8/6/2005.

Pump Station #4: Authorize Request for Proposals for consulting service.

Bids: Accept a) OP #6484, bid of Clean Air and Water Systems LLC to furnish and install high-density polyethylene geomembrane liner at Columbia Heights Membrane Plant; b) OP #6466, low bid of Skyline Fire Protection, Inc. to install a fire protection system; and c) OP #6438, low responsive bids of American Cast Iron Pipe Company, Minnesota Pipe and Equipment, and National Water Works for ductile iron pipe, gates, and cast or ductile iron fittings.

WAYS AND MEANS BUDGET:

EXECUTIVE COMMITTEE (270582)

Governor's Salary Cap: Report advising HR Departments implementation of legislative changes - Receive and File.

WAYS AND MEANS BUDGET (See Rep):

ATTORNEY (270583)

Legal Settlements: a) Jonathan J. Charon; b) Deborah Upchurch; c) Hollywood Theatre Company, et al.

BUSINESS INFORMATION SERVICES (270584)

Enhanced (E-911) Telephone System: Issue RFP for improvements in emergency service delivery.

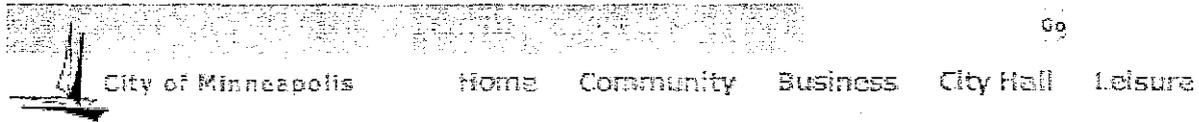
Minneapolis Emergency Communication Center: Execute contract with TriTech Software Systems for the Computer-Aided Dispatch (CAD) System; and Approve appropriation.

Unisys Contract: Increase Contract No. C-1888101 for Change Order transactions \$50,000 or less, for a period of 7 years (2003 - 2010).

CONVENTION CENTER (270585)

Emergency Medical Services: Authorize issuance of RFP for Emergency Medical Services at the Minneapolis Convention Center, effective January 1, 2006.

Visitor's Information Kiosk: Accept low bid from Greiner Construction Inc. for a Visitor's Information Kiosk at the Convention Center.



[2005 Meeting Schedule](#)

Transportation & Public Works Agenda

Standing Committee of the City Council, Minneapolis, Minnesota

Regular Meeting

July 26, 2005 at 9:30 a.m., Council Chamber, Room 317 City Hall

Committee Members Present: Colvin Roy, Lilligren, Benson, Zimmermann

Committee Members Absent: Lane, Schiff

Also Present: Ed Backstrom, City Attorney; Klara Fabry, Director of Public Works

Committee Coordinator: Peggy Menshek, 612-673-2287 peggy.menshek@ci.minneapolis.mn.us

Consent

1. Approval of Lease of City-Owned Property:

Authorize negotiation and execution of a five-year lease agreement with VoiceStream Minneapolis, Inc. (dba T-Mobile) for the use of space in the St. Anthony Municipal Parking Ramp as a cellular antenna site, commencing January 1, 2006 or with the onset of construction, whichever occurs first.

Staff Report: [VoiceStream Lease](#)

Action Taken: Approved & referred to W&M/Budget

2. Mill Quarter Municipal Ramp:

a) Approve Change Orders No. 1 through 8 increasing the contract with Knutson Construction, Inc. by \$355,358, for a new contract total of \$5,203,358. No additional appropriation is required; and

b) Increase contract duration by 63 days, to August 6, 2005, due to documented delays.

Staff Report: [Mill Quarter Ramp](#)

Action Taken: Approved & referred to W&M/Budget

3. Reimbursement Contract with Nextel:

Authorize agreement with Nextel to receive reimbursement for work performed by City staff.

Staff Report: [Nextel](#)

Action Taken: Approved

4. Critical Traffic and Parking Area:

Adopt the findings and approve a "Type B" Critical Traffic and Parking Area (No Parking Except by Permit - 6 am to 9 pm, School days), which will include the 4600 and 4700 blocks of Abbott, Beard, Chowen, and Drew Avenues South.