### BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) A LONG TERM LEASE AGREEMENT ) OF PROPERTY FOR A CELLULAR ) TELEPHONE ANTENNA SITE AT THE ) M. JAMES GLEASON BOAT RAMP. ) **RESOLUTION NO. 96-2369** 

Introduced by Mike Burton, Executive Officer

WHEREAS, AT&T Wireless Services representatives have approached the Regional Parks and Greenspaces Department to negotiate a long term ground lease for a small cellular telephone facility at the M. James Gleason Boat Ramp; and

WHEREAS, The Metro Council adopted Resolution No. 94-1979 on November 22, 1994, for a similar type of lease with GTE Mobilnet (now US West New Vector Group) at Glendoveer Golf Course; and

WHEREAS, The purpose of the antenna site is to improve the quality of cellular service for the Northeast Marine Drive/Airport (PDX) area; and

WHEREAS, Metro desires to receive rent and AT&T Wireless Services desires a long term lease for a cellular antenna site; and

WHEREAS, AT&T Wireless Services has agreed to pay Metro a rate based on the current rent charged to US West New Vector Group and abide by similar terms as the existing long term lease with US West; and

WHEREAS, The amount of rent that AT&T will be charged is at a rate which is either equal to or higher than other comparable cellular antenna facilities on public or private properties in the region; and

WHEREAS, The cellular antennas operate a very low power that is exempt from Portland's detailed land use requirements for high powered facilities and meets all FAA height restriction guidelines; and

WHEREAS, Negotiations for a long term lease have been concluded, and the lease agreement is attached; now, therefore,

BE IT RESOLVED,

1. That the Metro Council hereby authorizes the Executive Officer to execute a long term ground lease with AT&T Wireless Services for a cellular telephone antenna site at the M. James Gleason Boat Ramp, in a form substantially similar to attached Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_\_ day of <u>August</u>, 1996.

Jon Kvistad, Presiding Officer

ATTEST

Recording Secretary

Approved as to Form:

Daniel B. Cooper, General Counsel

### **REGIONAL PARKS AND GREENSPACES STAFF REPORT**

## RESOLUTION NO. 96-2369 FOR THE PURPOSE OF AUTHORIZING A LONG TERM LEASE AGREEMENT OF PROPERTY FOR A CELLULAR TELEPHONE ANTENNA SITE AT THE M. JAMES GLEASON BOAT RAMP.

Date: July 11, 1996

Presented by:

Charles Ciecko, Director Dan Kromer, O & M Manager Regional Parks and Greenspaces

### FACTUAL BACKGROUND AND ANALYSIS

AT&T Wireless Services has approached the Regional Parks and Greenspaces Department to negotiate a long term ground lease for a small cellular telephone facility at the M. James Gleason Boat Ramp located at 4325 N.E. Marine Drive. The area that the cellular antenna facility will be located on is the southeast corner of the boat facility parking lot. The purpose of the antenna site is to improve the quality of cellular service for the Northeast Marine Drive/Airport (PDX) corridor area.

The Metro Council adopted Resolution No. 94-1979 on November 22, 1994, that allowed a similar long term ground lease with GTE Mobilnet (now US West New Vector Group) at Glendoveer Golf Course. The GTE agreement called for a five year lease with three five year renewals and a CPI cost of living adjustments to the lease rate each year. Presently the Department receives \$1,482.79 per month from this lease. The AT&T Wireless Services' lease proposal is similar to the existing US West lease at Glendoveer. AT&T is requesting a five year lease with five five year renewals, at their option, and annual CPI increases. The rent, at \$741.40 per month, is based on the amount of space requested by AT&T which is less than half of what US West is currently leasing.

The attached survey performed by Department staff along with rent information supplied by AT&T reveals that the negotiated lease revenue is competitive. The amount of rent that AT&T will be charged is at a rate which is either equal to or higher than other comparable cellular antenna facilities on public or private properties in the region.

The lease agreement is exempt from Portland's detailed land use requirements for high powered facilities since the cellular antennas operate on very low power. Also, AT&T has met all FAA height restriction guidelines.

A Regional Parks and Greenspaces staff member will be present to answer any questions by Council regarding this agreement.

#### **Executive Officer's Recommendation:**

The Executive Officer recommends adoption of Resolution No. 96-2369.

### CELLULAR SITE INQUIRIES TO LOCAL JURISDICTIONS (May 9 & 13, 1996)

- City of Portland, Water Bureau, Dan Combs (823-7402) Several cell sites on top of water tanks similar to Glendoveer's. Lease payment same as for Glendoveer (\$1,483/mo. with annual CPI increases).
- City of Gresham, Myron Johnson (618-2687) No cell sites on city property. Have had a few proposals but the city does not want to be involved with cell sites because of negative visual aspects of antennas. Possibly going through some litigation on this.
- 3. City of Hillsboro, Gary Ehrenfeld (681-6101) No cell sites on city property.
- 4. City of Vancouver, Don Jackman (360-696-8212) No cell sites on city property. They had a couple of cell site proposals for placement on their water tanks but did not accept any of them because of conflicts concerning the city's need to be able to perform preventive maintenance on the water tanks. However, the city does have a lease agreement on one of its water tanks with TCI, for cable purposes only, that is \$100/yr. TCI also spent \$6,000, on an one time basis, for improvements to the road leading into the site.
- 5. Multnomah County, Wayne George (248-3322) No cell sites on county property. Talked to either AT&T or US West regarding potential cell sites but nothing worked out.
- Washington County, Carl Schulz (648-8829)
  No cell sites on county property. Had one proposal from Sprint for \$500/mo. but decided they did not want to deal with cell sites.
- 7. Clackamas County, (650-3325) No response. Left two messages.
- 8. Clark County, Daryl Stump (360-699-2282) No cell sites on county property.

## CELLULAR SITE INQUIRIES TO REGIONAL JURISDICTIONS (June 7, 1996)

- City of Eugene, Information Services, Randy Colb (541-687-5075) The city has two cell sites. One is with Cellular One for \$400/mo. worth of airtime. The other is with Sprint for \$600/mo. for a 60 ft. x 60 ft. leased area.
- City of Seattle, Administrative Services, Matt Lampe (206-684-0504) No cell sites currently on city property. However, due to numerous inquiries from cellular phone companies they are in the process of developing guidelines for lease agreements. He is interested in reviewing our agreements.

# AT&T Wireless Services Cellular Antenna Site Rents

The following list was submitted by AT&T Wireless Services and shows existing site rents that they are charged which are comparable to the installation planned for the M. James Gleason Boat Ramp location:

**Location** 

### Monthly Rent

NE 28th & Couch NE 39th & Powell NE 49th & Powell NE 39th & Hawthrone \$525\* \$300 \$300 + \$100 airtime \$400

\*This site was originally leased in 1995 at a rent of \$400/month. However, AT&T Wireless Services determined it needed additional ground space so the lease was renegotiated, thereby increasing the rent.

### **EXHIBIT A**

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## CELLULAR SITE LEASE AGREEMENT

THIS LEASE, entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 199\_, between Metro, a Municipal Corporation of the State of Oregon ("Lessor"), 600 Northeast Grand Avenue, Portland, Oregon 97232-2736 and AT&T Wireless Services of Oregon, Inc., a Nevada Corporation, 1600 Southwest Fourth Avenue, Portland, Oregon, 97201-5522 ("Lessee").

1. Lease Description. Lessor owns the M. James Gleason Boat Ramp described on "Exhibit A", attached hereto (the "Property"). Lessor hereby leases to Lessee certain space located on the Property for Lessee's equipment shelter and monopole with antennas as shown on the Site Plan attached hereto as "Exhibit B". The said equipment shelter and antenna space shall collectively be described as the "Premises" herein.

2. <u>Term.</u> Subject to Section 6 and 7, this Lease shall be for a period of five (5) years. The five year period shall commence on the effective date of this agreement. Lessor grants Lessee the right to renew the underlying Lease for an additional five, five (5) year options. This lease shall automatically renew for each successive Renewal Term unless Tenant shall notify Landlord, in writing, of Tenant's intention not to renew this Lease, at least 60 days prior to the expiration of the term or any Renewal Term.

3. <u>Payment Provisions.</u> (a). Lessee shall pay Lessor, as rent, the sum of seven hundred forty-one dollars and 40/100 (\$741.40) per month during the first year of

the Lease. At the beginning of each year thereafter, the monthly rent shall automatically be adjusted in the proportion to the change in the "All Items" category of the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the Bureau of Labor Statistics of the U.S. Department of Labor for the Portland Metropolitan Statistical Area (1982-84 = 100) (the "Index"). The first adjustment shall be based on the amount, if any, by which the aforementioned Index for the first calendar year of the Lease term has changed from the Index for the calendar year preceding the commencement of the Lease term. Subsequent adjustments will be based on the amount, if any, by which the aforementioned Index for each subsequent calendar year of the Lease term has changed from the Index for the calendar year of the preceding 12-month period. If the aforementioned Index is discontinued, the parties agree to use a locally available comparable substitute. Rent shall be payable on the first day of each month, at such place as may be designated by Lessor, except that for rent the first month shall be paid upon execution of this Lease, and Lessor acknowledges receipt of the same.

4. <u>License</u>. Lessee has been granted a license (the "License") by the Federal Communications Commission (the "FCC") to construct a cellular radio communications system in the Portland Metropolitan Statistical area. Lessee shall be authorized to use the premises as a cell site for such system, as more fully described in Section 5 below.

5. (a) <u>Use of Site.</u> Lessee shall have the right to erect and maintain on the Premises a cellular monopole with antennas and an equipment shelter for housing of electronic equipment related to the antennas and its cellular system and perimeter landscaping (collectively hereinafter referred to as the "Cell Site Facility"). Lessor acknowledges that it has been apprised on the extent of such construction as depicted on Exhibit "C" attached hereto. Design review and final details of the site modifications and equipment building depicted on Exhibit "C" shall be approved by the Lessor prior to installation. The Lessor shall be notified in writing two weeks prior to the start of installation work at the Premises. Lessee shall restore Lessor's property at the Premises to the same condition as found at the start of the installation work as soon as all installation work in completed. All improvements including monopole with antennas, cellular equipment shelter and landscaping (as depicted in Exhibits "B" and "C" of this Lease) shall remain the exclusive property of the Lessee and shall be removed within one (1) month by Lessee at the termination of this Lease or due to technological advances which make the Cell Site Facility unnecessary. Lessee, upon termination and removal of said monopole with antennas, cellular equipment shelter and landscaping from the premises, shall restore to the Lessor's satisfaction, any areas specifically damaged by the attachment and/or removal of the above improvements from the Premises.

(b) <u>Maintenance</u>. The Cell Site Facility shall be erected and maintained at the expense of Lessee, and at its sole risk. Lessee shall maintain the Cell Site Facility including antenna, equipment shelter and any other components of the Cell Site Facility. Any graffiti placed on the equipment shelter shall be removed within one (1) week after notification. The Lessee shall maintain perimeter landscaping at the Cell Site Facility.

(c) Indemnification. Lessee will defend, indemnify and hold harmless Lessor, its officers, agents and employees, from any liability, loss or damage Lessor may suffer (including any reasonable attorneys' fees and expense) as a result of claims, demands, actions, suits, costs or damages against Lessor of any kind whatsoever in connection with or arising out of (1) any violation of law, ordinance or covenant or condition of this Lease by Lessee, its agents, employees, invitees or visitors or (2) any injury or damage occurring to any person or to property of any kind belonging to any person from any cause or causes whatsoever while on or in any way connected with any portion of the Premises during the term of this Lease. However, this provision shall not be construed to relieve Lessor from responsibility for any loss or damage caused to Lessee or others solely as a result of negligence or willful acts of Lessor or its employees. Lessee shall give Lessor prompt notice in case of casualty or accidents on the premises. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than Lessor's sole negligence, and Lessee waives all claims in respect thereof against Lessor.

(d) <u>Utility Services.</u> Lessor understands that Lessee may be required to supply the Premises with utilities and/or to improve the present utility service to the Premises. Lessee shall have the right to install utilities on the Premises. Lessor and Lessee agree to negotiate in good faith to determine the manner in which any such utility services will be supplied to the Premises. (e) <u>Access.</u> Lessor shall provide Lessee reasonable access over the Property to the Premises at all times during the Lease for the purpose of constructing, servicing, maintaining, or removing the Cell Site Facility.

(f) <u>Services to the Premises/Liens.</u> Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on, and for services rendered or material furnished to, the Premises, and shall keep the Premises free from all liens.

(g) Radio Interference. Lessee shall protect any Lessor-owned or approved transmitter and receiver installation (such as the Multnomah County Sheriff's Office River Patrol Unit office) from any form of radio or transmission interference from the Cell Site Facility. Protection shall include but not be limited to: transmitter intermodulation, received intermodulation, or spurious radiation. Similarly, Lessor shall not use, nor shall Lessor permit its tenants, licensees, employees, invitees or agents to use, any portion of Lessor's properties in any way which interferes with the operations of Lessee. Such interference shall be deemed a material breach by the interfering party, who shall, upon 10 days written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease immediately upon notice.

For the purposes of this provision, "Interference" may include, but is not limited to, any other use on the site that causes electronic, physical or obstruction

interference with, or degradation of, the communications signals from Lessee's facility. In general, the parties agree that physical location of another 800-2500 MHz communications facility within 130' of Lessee's facility will cause interference and, accordingly, Lessor will not allow such future uses in Lessor's property without the written consent of Lessee. Any level of discernible or measurable signal degradation or interference is deemed as material in nature and will fall within this provision.

6. <u>Termination By Lessor.</u> (a) Lessor shall have the right to terminate this Lease, by written notice to Lessee, if an event of default by Lessee occurs and if Lessee has not corrected such default or begun correction within 30 days after written notice from Lessor. An event of default by Lessee shall occur if Lessee (1) fails to pay any rent on or before the date due, (2) fails to fulfill any obligations or term of this Lease, or (3) is deemed insolvent, makes an assignment in bankruptcy, or fails to secure dismissal of an involuntary bankruptcy, or petition within a reasonable time.

(b) Lessor may terminate this Lease if, in the sole judgment of the Lessor, Lessor needs the premises as part of Lessor's responsibility to provide its services, provided Lessor gives Lessee written notice 24 months in advance of Lessor's need to re-enter the Premises. Lessor may terminate this Lease by giving less than 24 months advance written notice to Lessee, for reasons of public health, safety, or emergency reasons which, in the reasonable judgment of the Lessor, requires Lessee's exclusion from the Premises.

7. <u>Termination By Lessee</u>. Lessee shall have the right to terminate this Lease, by written notice to Lessor, upon the occurrence of any of the following events:

(a) If Lessor defaults in observing any covenant or term hereof and fails to correct such default or commence correction of such default within 30 days after written notice from Lessee.

(b) If the approval of any agency, board, court or other governmental authority necessary to construction and/or operation of the Cell Site Facility cannot be obtained, or if Lessee reasonably determines the cost of obtaining such approval is prohibitive.

(c) If Lessee reasonably determines that the Premises are not appropriate for a Cell Site Facility for technological reasons, including, but not limited to, signal interference.

(d) At any time if the License is revoked, materially amended or suspended.

8. <u>Effect of Termination.</u> Upon notice to terminate by Lessor or Lessee under Section 6 or 7 above, the Lease shall terminate and be of no further force and effect, except for the requirements set out in Section 5 and Section 15.

9. <u>Real Property Taxes.</u> Upon commencement of the Lease, real property and/or excise taxes for the Premises shall be the responsibility of the Lessee. Lessee shall annually furnish proof to the Lessor that any taxes due have been paid. Should the Lease be terminated by either Lessor or Lessee, Lessee shall be responsible only for a prorated amount based on the date of termination of the Lease.

10. <u>Insurance.</u> Lessee shall maintain public liability and property damage insurance including automobile liability insurance and a fire legal liability endorsement, that protects Lessee and Lessor and its officers, agents and employees from any and

all risks, claims, demands, actions and suits for damage to property including without limitation cracking or breaking of glass, or personal injury, including deaths, arising directly or indirectly from Lessee's activities or any condition of the Premises, whether or not related to an occurrence caused or contributed to by Lessor's negligence. The insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under this Lease and shall protect Lessor and Lessee against claims of third persons. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damages; or a single limit policy of not less then \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the terms of this Lease. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Lessor and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to Metro's Risk and Contract Manager. If the insurance is canceled or terminated prior to termination of the Lease, Lessee shall provide a new policy with the same terms. Lessee agrees to

maintain continuous, uninterrupted coverage for the duration of the Lease. Lessee shall maintain on file with Metro's Risk and Contract Management a certificate of insurance certifying the coverage required by this section. The adequacy of the insurance shall be subject to the approval of Metro's General Counsel. Failure to maintain liability insurance shall be cause for immediate termination of the Lease by Lessor. A copy of Lessee's liability insurance certificate will be forwarded under separate cover.

Lessor shall have the right to review the limits of insurance required by this section at any time this Lease is renewed. In the event Lessor reasonably determines that such limits should be increased or lowered, Lessor shall provide notice to Lessee of such determination and Lessee shall, if the limits are increased, modify its coverage to comply with the new limits and provide Lessor with an updated certificate. Under no circumstances shall Lessor be responsible for or provide insurance to cover loss or damage of Lessee's equipment or personal property.

11. Force Majeure. If a material portion of the Premises or Lessee's improvements thereon are destroyed or damaged by fire, windstorm or other catastrophic event, Lessee may elect to terminate the Lease effective as of the date of the damage or destruction by notice given to Lessor in writing not more than 45 days following such date. In such event, all rights and obligations of the parties shall cease as of the effective date of termination, except for the requirements set out in Section 5 and Section 15.

12. <u>Sublet/Sublease</u>. Lessee may not assign or sublet the Premises at any time for use as a cell site for a cellular radio communications system or for any other

purpose without the prior written approval of the Lessor, and no such assignment or sublease shall relieve Lessee from any of its obligations hereunder.

13. <u>Notices.</u> Any notice required or permitted under this Lease shall be given when actually delivered, or 48 hours after deposited in the United States mail as certified mail, addressed to the addresses as specified below, or as from time to time changed by either of the parties in writing.

Lessor:

## Metro Director Regional Parks and Greenspaces Department 600 NE Grand Avenue Portland, Oregon 97232-2736

Lessee:

AT&T Wireless Service 1600 SW Fourth Avenue Portland, Oregon 97201-5522 Attn: Real Estate Manager

With a copy to:

AT&T Wireless Services, Inc. 12112 115th Avenue NE Kirkland, WA 98034 Attn: Legal Department

14. <u>Rental.</u> If this Lease terminates at a time other than the end of one of the specified rental periods, then the rent shall be prorated as of the date of termination, and in the event of termination for reasons other than default of Lessee, all prepaid rent shall be refunded to Lessee or paid on its account. In the event of termination due to default of Lessee, any prepaid rent shall be retained as the property of the Lessor.

15. <u>Succession</u>. This Lease shall run with the Property described in Exhibit "A". This Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Any successor to Lessee arising as a result of

withdrawals of existing partners, admissions of new partners, transfers of interest of partners, or incorporation of the Lessee shall be deemed the Lessee hereunder for all purposes of this Lease (including this sentence). Lessee and its assigns, if any, shall only use the site for a cellular radio communications system. Other forms of communication must be approved by the Lessor prior to implementation.

16. <u>Payment Location</u>. Per Section 3 ("Payment Provisions") the place designated by Lessor for payment of the monthly rent for the Antenna Site Lease Premises is:

> Metro Accounts Receivable 600 NE Grand Avenue Portland, Oregon 97232

or such location as may be requested in writing by Lessor's Department Director. Payment shall be by a check made payable to Metro.

17. Miscellaneous.

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

(b) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

(c) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease) necessary to protect its rights or use of the

Premises. The Memorandum of Lease may be recorded in place of this Lease, by the Lessee with no obligation to the Lessor.

(d) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(e) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(f) Any actions or lawsuits by one party to the Lease against the other arising out of the Lease or of conduct, acts or activities of the Parties hereunder will be governed by Oregon Law and shall be maintained in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon. No such action against the Lessor may be maintained except in the State of Oregon. Lessee consents to the maintenance of any such action by the Lessor against it in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District of Oregon.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, any corporation signature being by authority of the Board of Directors.

METRO

AT&T WIRELESS SERVICES, INC.

Mike Burton Executive Officer Edwin E. Menteer System Development Manager

## Exhibit A Cellular Site Lease Agreement between Metro and Interstate Mobilephone Company dated

The M. James Gleason Boat Ramp Property is legally described as follows:

TL 200, Section 6, Township 1 North, Range 2 East of the Willamette Meridian, Multnomah, County, Oregon (Tax Account # R 94206-0310)





