

RESOLUTION NO. 2018-06
AUTHORIZING A WATER TANK ATTACHMENT LEASE AGREEMENT
BETWEEN THE CITY OF NORTH AUGUSTA AND
T-MOBILE SOUTH, LLC.
FOR THE SIDEREAL AVENUE WATER TANK

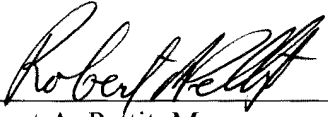
WHEREAS, the City of North Augusta desires to lease to T-Mobile South, LLC., certain space upon the City's Atomic Road water tank upon which T-Mobile has certain antennae, other equipment, and related devices, and to lease ground space used exclusively to house T-Mobile's equipment; and

WHEREAS, T-Mobile desires to lease from the City certain space on the City's Sidereal Avenue water tank and ground space for T-Mobile's equipment.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council for the City of North Augusta in meeting duly assembled and by the authority thereof, hereby authorize the attached Water Tank Attachment Lease Agreement between the City and T-Mobile South, LLC. for the Sidereal water tank.

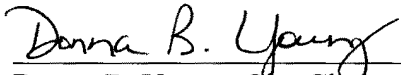
BE IT FURTHER RESOLVED, that the City Administrator is authorized to sign the agreement on behalf of the City and to sign all other documents relating thereto.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS 19th DAY OF February, 2018.



Robert A. Pettit, Mayor

ATTEST:



Donna B. Young, City Clerk

**WATER TANK SITE LEASE AGREEMENT
BETWEEN THE CITY OF NORTH AUGUSTA
AND T-MOBILE SOUTH LLC**

THIS LEASE AGREEMENT (“Agreement”) is executed this ____ day of _____, 2018, between the City of North Augusta, South Carolina, a municipal corporation, hereinafter designated as (“Lessor”) and T-Mobile South LLC, a Delaware limited liability company, hereinafter designated (“Lessee”).

WHEREAS, Lessor desires to Lease to Lessee certain space upon a Water Tank owned by Lessor upon which Lessee has certain antennas, other equipment, and related devices, and to continue Lease of Ground Space for the housing of Lessee’s equipment.

NOW THEREFORE, for and in consideration of the terms and mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Property Description

- a. Lessor is the owner of the real property located at 114 Sidereal Avenue, North Augusta, South Carolina 29841, (hereinafter called the “Property”). The Property includes the premises which are comprised of approximately eight thousand six hundred sixty eight (8,668) square feet. The Lessee is hereby granted non-exclusive use of five hundred (500) square feet of Ground Space, made part hereof, (the “Ground Equipment Area”) as described and/or depicted in Exhibit “A” and the non-exclusive use of the Lessor’s Water Tank located on the Property as described and/or depicted on Exhibit “B” attached hereto and made part hereof.

2. Property Use

- a. Lessee is hereby granted the non-exclusive right to install, maintain, operate, remove and replace its Wireless Communications Equipment and appurtenances on the Lessor’s Property and Water Tank.
- b. The primary purpose of the Property is for the operation of a water storage tank and such other operations of the Lessor’s Public Utilities Department.
- c. The Lessee understands and agrees that the Lessor’s use of the Property shall have priority and the Lessee shall make necessary accommodations to permit the Lessor’s uses of the Property to operate safely and efficiently.
- d. Any modifications to the Ground Equipment Area and/or the Water Tank, such as, but not limited to an increase in the size, number, color, or noise output of shelters, cabinets, cables, antennae and/or expansion of the same shall require an amendment to this Lease and Lessee’s prior written approval from Lessor.

- e. Notwithstanding the above, exchange of like-kind equipment on the Water Tank and Ground Equipment Area shall not require approval of the Lessor unless such exchange results in increased noise output, other appreciable impact, or potential health or safety impact.
- f. Lessee shall be responsible for all necessary utility service connections for its equipment and shall be solely responsible for all costs and expenses related to connection, disconnection, consumption and use of any utility service.
- g. Lessee shall have the right to install and maintain underground utility wires, cables, conduits, and pipes along the Property to the Ground Equipment Area.
- h. Lessee shall be granted a non-exclusive right of way for ingress and egress over the Property to the Ground Equipment Area and the Water Tank Equipment, seven (7) days a week twenty-four (24) hours a day.
- i. Notwithstanding the rights granted Lessor shall have the sole and exclusive right to lease any portion of the remainder of the Property, including but not limited to the Water Tank, to other Lessees, including but not limited to other telecommunications companies that may wish to collocate their equipment on the property.
- j. Lessee shall not take any action with respect to the remainder of the Property or its equipment installed on the Water Tank or Property that would hinder collocation by any other telecommunications provider(s).
- k. Lessor shall not be required to alter the Water Tank, the Premises, or the Property to accommodate Lessee's operation of its Communication Facility.
- l. Lessee shall comply with all present and future rules and regulations imposed by any local, state, or federal authority having jurisdiction over transmissions and operations involved in the wireless communications systems and equipment.

3. Initial Term

- a. The initial term of this Lease shall be for a period of five (5) years commencing on July 1, 2018 ("commencement date") and expiring on June 30, 2023 ("initial term").
- b. Upon the commencement of this Lease the Lessee shall pay the Lessor rent payments in the amount of Three Thousand and No/100 Dollars (\$3,000.00) per month. Lessee shall deliver rent to Lessor at the address specified in section 3 (c), or by electronic wire transfer. The first payment shall be due within twenty (20) business days after the Commencement Date. Subsequent rent shall be payable by the fifth day of each month. Each year thereafter the Lessee shall pay an increase rent an amount equal to the previous year, plus three percent (3%).
- c. All Rent Payments shall be made payable to "City of North Augusta", and delivered to the Attention of City Clerk, PO Box 6400, North Augusta, SC 29861-6400.

4. Renewal Term

- a. The initial term shall automatically renew for three (3) successive renewal terms of five (5) years each (each a "renewal term"), under the same terms and conditions including a 3% escalation over previous years rent. This agreement may be terminated by either party by giving to the other written notice of its intention to so terminate at least one hundred eighty (180) days prior to the end of such term.
- b. Upon the expiration of the final renewal term, Lessee shall have the right to continue occupying the premises, and the terms and conditions of the lease shall automatically extend for successive one (1) year periods each an extended period. Rent shall include a 3% escalation over previous years rent. Lessor or Lessee may terminate the renewal of any extended period by delivery of notice at least six (6) months prior to the end of the then current extended period.

5. Default

- a. If either party shall fail or neglect to keep and perform each and every one of the conditions and agreements contained herein, and such failure or neglect is not remedied within thirty (30) days after written notice from the other party specifying such failure or neglect, then such party shall be deemed to be in default under this agreement.
- b. In the event that either party shall fail to cure the default after notice given as set forth above, then the other party may pursue any legal remedy available to cure the default and/or may terminate this Agreement. There shall be no default if either party shall be deemed complete unless at the time the other party seeks to take any action based upon such alleged default, the same shall remain uncured.
- c. The Lessee shall be deemed in default under this Agreement if rent payment is not paid within forty five (45) days of the due date.
- d. In addition to, and not in substitution for, any other remedy for a default under this Agreement in the case of an emergency or urgent matter affecting the public health, safety, or welfare directly caused by Lessee, Lessor may take immediate action to remedy the default and the cost of such remedy shall be borne by the Lessee.
- d. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

6. Termination of Lease Agreement.

Except as otherwise provided herein, this Lease may be terminated without any penalty or further liability upon written notice as follows:

- a. By Lessee upon six (6) months' advance written notice to Lessor in the event that Lessee is unable to continue to use the property for technical reasons including the property being unacceptable as part of Lessee's network design.

- b. Nothing contained in this Lease requires the Lessor to continue to operate or maintain the tank, and this Lease remains effective only so long as the Lessor operates and maintains such tank structure. In the event the Lessor at any time determines, at its sole discretion, to discontinue the use of the Water Tank which is the subject of this lease, then and in such event the Lessor may upon one (1) year's notice terminate this lease.
- c. That continued maintenance and/or operation of Lessee's Communication Equipment on the Property is contrary to the public, safety, health, or welfare.

7. Removal of Lessee's Equipment

- a. Prior to the expiration of any Lease Term under this Agreement, or any earlier termination of this Agreement, Lessee shall at its own cost and expense, remove from the Water Tank, and the Property its Communications Equipment and other property on the Premises, and restore the Property to its condition existing on the commencement date.
- b. If Lessee's Communications Equipment or other property remains on the Property after expiration of any Lease Term or any earlier termination of this Agreement, Lessee shall pay an amount to the Lessor equivalent to Rent at the last existing rate until such time as the removal of said property is completed or declared to be forfeited.
- c. If Lessee's Wireless Communications Equipment remains on the Property after the expiration of the final Renewal Term or Extended Period, or after earlier termination of this Agreement, Lessor may, by written notice to Lessee, declare all such property and equipment of Lessee to be forfeited, and lessor may retain or dispose of such property and equipment as it deems fit, without further responsibility of Lessee. Such forfeiture of property and equipment nor relieve Lessee of its responsibility for any damages to the Property caused by Lessee's use of the Property or operation of its Wireless Communications Equipment not relieve Lessee of its responsibility to pay any outstanding Rent.

8. Insurance.

- a. During the initial term and all renewal terms, Lessee shall obtain and maintain, at their own expense, a policy of commercial general liability insurance with bodily injury limits of \$1,000,000 for injury or death to one (1) person, \$2,000,000 per occurrence and property damage insurance with a limit of \$1,000,000 or \$3,000,000 combined single limit coverage for bodily injury and property damage.
- b. Lessee may satisfy the limits required in this section with the combination of primary and Excess/umbrella liability insurance policies including the Lessor as additional insured.
- c. Lessee shall provide Lessor with a certificate of insurance showing the Lessor included as an additional insured on said commercial general liability insurance.
- d. Lessee during the initial term and all renewal terms shall obtain and maintain Workers Compensation and Employers Liability Policy with limits meeting statutory mandates with a minimum of \$500,000 for bodily injury.

- e. Lessee shall report to Lessor in writing with twenty-four (24) hours any accident or incident related to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Lessee or Lessor.
- f. Lessee shall report to Lessor any third party claim or lawsuit filed against Lessee arising from or related to services performed by Lessee under this Agreement.

9. Subrogation.

- a. In General. All insurance policies required under this Lease shall, if possible, contain a waiver of subrogation provision under the terms of which the insurance carrier waives all of its rights to proceed against Lessor or Lessee, as the case may be. If waivers of subrogation are obtained, the party procuring such insurance shall use its best efforts to obtain a certificate of insurance which notes the waiver of subrogation and a copy of the insurance policy endorsement which evidenced the insurance carrier's assent to the waiver of subrogation.
- b. Mutual Release. Lessor and Lessee each release the other and their respective representatives from any claims by them or any one claiming through or under them by way of subrogation or otherwise for damages to any person or to the Property and to the fixtures, personal property, improvements, and alterations in or on the Property that are caused by or result from risks insured against under any insurance policy carried by them and required by this Lease; provided that, such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies.

10. Destruction of Premises.

- a. In the event the Premises and/or Water Tank is damaged or destroyed by fire, wind, flood or other natural or manmade cause, the Lessor shall have the option to repair or replace the Premises or to terminate this Lease effective on the date of such damage or destruction. If the Lessor elects to repair or replace the Premises, until such repair or replacement is completed, and during such time the Lessee is unable to utilize the Property, Lessee shall be entitled to the pro-rata reimbursement of any rent prepaid by Lessee. If the Lessor undertakes such repair or replacement, but cannot complete the same within one hundred eighty days (180) days after the damage occurred, Lessee may terminate this Lease upon thirty (30) days written notice and have no further obligations hereunder. In the event the Lessor elects to terminate the Lease, Lessee shall have no further obligations hereunder.
- b. In the event the Water Tank is damaged by Lessee or its officers, agents, employees, servants, or contractors, Lessor shall repair, restore or replace the tank, and, upon receipt of written documentary evidence, Lessee shall pay to Lessor all costs incurred in cleaning and/or repairing or replacing the Water Tank necessitated by said damage.

11. Environmental Compliance.

- a. Lessor, to the best of its knowledge, warrants or represents that the Property, the easement, and the improvements thereon are free of contaminants, oils, asbestos, radon, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other

materials the removal of which is required or the maintenance of which is prohibited, regulated, or penalized by any federal, state, or local government authority ("hazardous materials").

- b. This Lease may, at the option of Lessee, be void and of no further force or effect if hazardous materials are discovered to exist on the Property and Lessee shall be entitled to a refund of all the consideration given Lessor under this Lease.

12. Accommodation of Other Carriers

Lessee acknowledges that other carriers may be potentially using the Property for similar wireless communication use. Lessee agrees to timely cooperate with Lessor and such third party users in order to maximize the potential use of the Property; however, such cooperation shall not cause Lessee to encumber any expenses to permanently or temporarily relocate Lessee's equipment.

13. Interference.

Both Lessor and Lessee recognize that the tank's primary purpose is to serve its function within the Lessor's water distribution system. The rights of Lessee shall be protected from interference from any third party whose equipment may be installed on the tank subsequent to this lease. Lessee shall be responsible for curing any and all interference to the operation of the Lessor's tank and communication systems equipment caused by the operation of equipment owned by Lessee. In the event that such interference cannot be eliminated or rectified within forty-eight (48) hours of the receipt of notice by Lessee from Lessor of the existence of interference ("notice date"), Lessor shall require the party causing the interference to disconnect utility service to their equipment until such time as the interference can be eliminated or rectified. If said interference cannot be eliminated or rectified within thirty (30) days of the notice date, Lessor may require the party causing the interference to immediately remove its equipment from the tank and the property.

14. Maintenance of Water Tank

- a. Upon at least ninety (90) days written notice from Lessor, Lessee at its sole cost and expense, shall make any necessary arrangements to either temporarily protect or remove all or portions of its communications equipment on and adjacent to the Water Tank to allow for Lessor's painting or other maintenance of the Water Tank. In the event of an emergency, advance notice shall not be required.
- b. If Lessee and Lessor agree that it is reasonable to keep all or any portion of the communications equipment in place during such painting or other maintenance of the Water Tank by Lessor, any additional expense of repainting, repairing, or maintaining the Water Tank incurred by Lessor and caused by the presence of Lessee's communications equipment shall be paid promptly by the Lessee to Lessor.
- c. Should Lessor and Lessee agree that the scheduled maintenance or painting of the Water Tank will prevent Lessee from using the water Tank for Lessee's Equipment, and it is more reasonable for the Lessee to temporarily relocate rather than protect its communications equipment in place, then at its own expense Lessee may install and operate temporary equipment, including a Cell-on-Wheels, if a mutually

acceptable location on the Property is available subject to applicable laws, rule, and regulations then in effect.

- d. Notwithstanding anything to the contrary in this Agreement, Lessee shall have the continuing right to access its Communication Equipment while Lessor performs maintenance on or paints the Water Tank as long as the access does not interfere with the Lessor's work or with the operation of the Water Tank.

15. Title and Quiet Enjoyment.

Lessor warrants that:

- a. It has the full right, power, and authority to execute this Lease.
- b. It has good and marketable title to the property and the easement free and clear of any liens, encumbrances, or mortgages.
- c. The property constitutes a legal lot that may be leased without the need for any subdivision or platting approval.
- d. Lessor further warrants that Lessee shall have the quiet enjoyment of the Property during the term of this Lease.

16. Successors and Assigns.

- a. Lessee shall not sublease any portion of the Property or its Communication Facilities.
- b. Lessee upon written approval of the Lessor shall have the right to assign, or otherwise transfer this Agreement to its affiliates. Upon Lessor's approval of assignment or transfer of Agreement the Lessee shall be relieved of all liabilities and obligations of the Lessor and shall look solely to the transferee for performance under this agreement.

17. Miscellaneous.

- a. This Lease constitutes the entire Agreement and understanding of Lessor and Lessee with respect to the subject matter hereof, and supersedes all offers, negotiations, and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said Lease must be in writing and executed by Lessor and Lessee.
- b. Lessor agrees to cooperate with Lessee in executing any documents necessary to protect Lessee's rights under this Lease or Lessee's use of the Property and to take any further action which Lessee may reasonably require as to affect the intent of this Lease.
- c. This Lease shall be construed in accordance with the laws of the state in which the property is situated.

- d. 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.
- e. Lessee may file in the county in which the Property and easement(s) are located a Memorandum of Lease which sets forth the names and addresses of Lessor and Lessee, the legal description of the Property and the easement(s), the duration of the initial term, and the quantity and the duration of the renewal terms.
- f. Lessor shall cooperate with Lessee's efforts to evaluate the tank and to comply with governmental regulations affecting Lessee's use of the Property by providing information about the tank, the tank's location, and prior filings made by Lessor with governmental agencies.
- g. This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.
- h. Lessor hereby waives any and all lien rights it may have, statutory or otherwise, in and to the antenna, equipment, and appurtenances or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.
- i. Lessor will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental, or consequential damages incurred by Lessor as a result of the construction, maintenance, operation, or use of the property or the easement by Lessee. Notwithstanding the foregoing, Lessee shall remain responsible for direct losses or damages attributable to Lessee's negligence or the negligent acts of Lessee's employees.

18. Entire Agreement; No Oral Statements

It is agreed and understood that this Agreement contains all agreements, promises and understandings between Lessor and Lessee and that no oral agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy or proceedings at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by both parties.

19. Representation and Warranties

- a. Lessee represents and warrants that all operations conducted by Lessee in connection with the tank and the property, including the tank lighting systems, meet all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Administration, and all applicable codes and regulations of the Lessor, county, and state concerned. Lessee shall maintain its lighting systems, tank antenna, transmission lines, equipment, and facilities in a proper operating and safe condition and shall comply with all notice requirements of the Federal Aviation Administration regarding the failure, malfunction, or repairs of the tank lighting systems.
- b. Lessor shall comply with any requirements of any federal, state, local, or regulatory body necessitated as a result of Lessor's equipment and/or its installation shall be the responsibility of the Lessor.

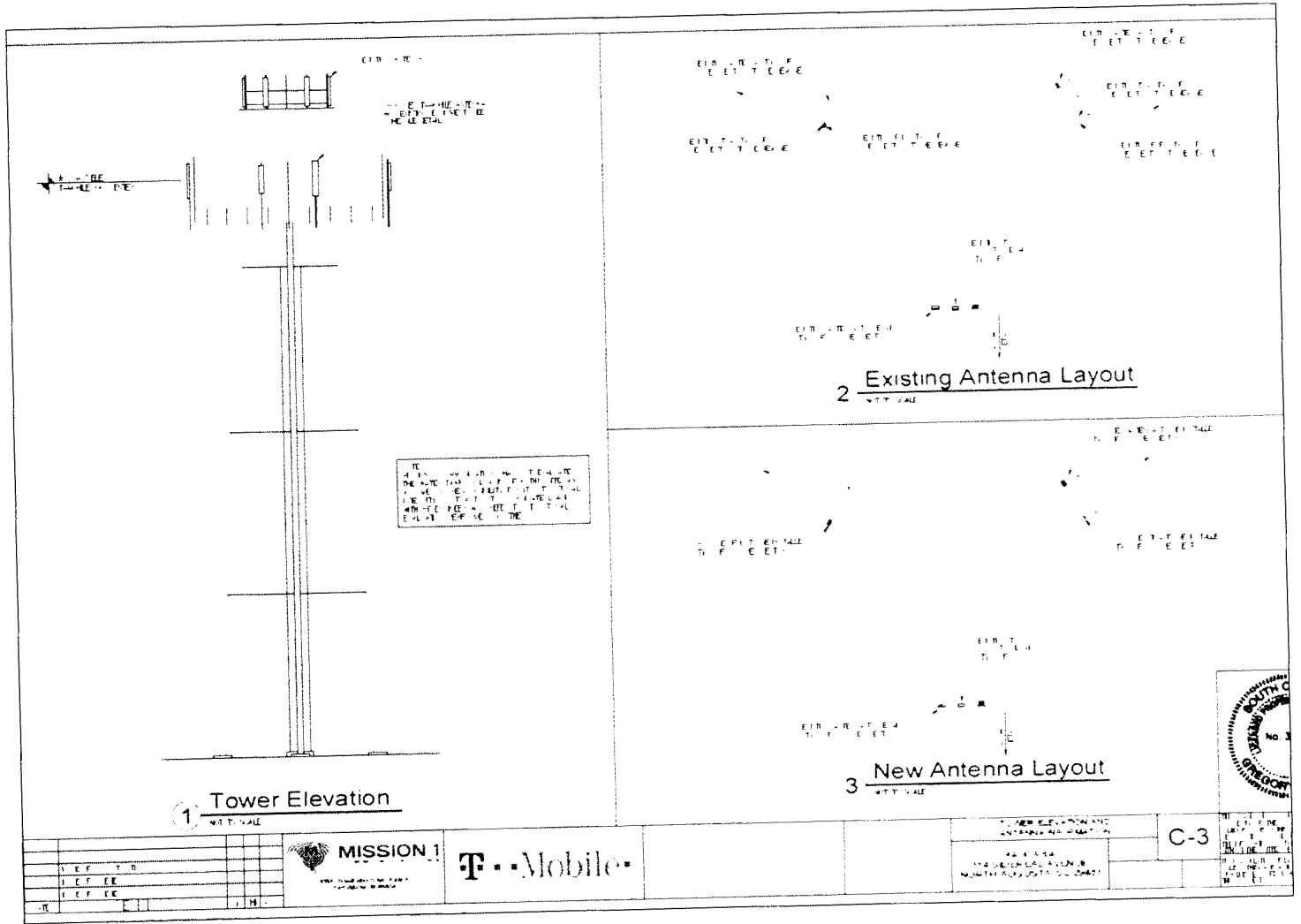
20. Notices

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or if personally delivered or sent by next-business-day delivery via a nationally recognized overnight carrier, to the following address(es) (or other address that the party to be notified may designate to the sender by like notice):

Lessee: T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Property Manager/8AU0301A

Lessor: City Clerk
100 Georgia Avenue
North Augusta, SC 29841

EXHIBIT "A"



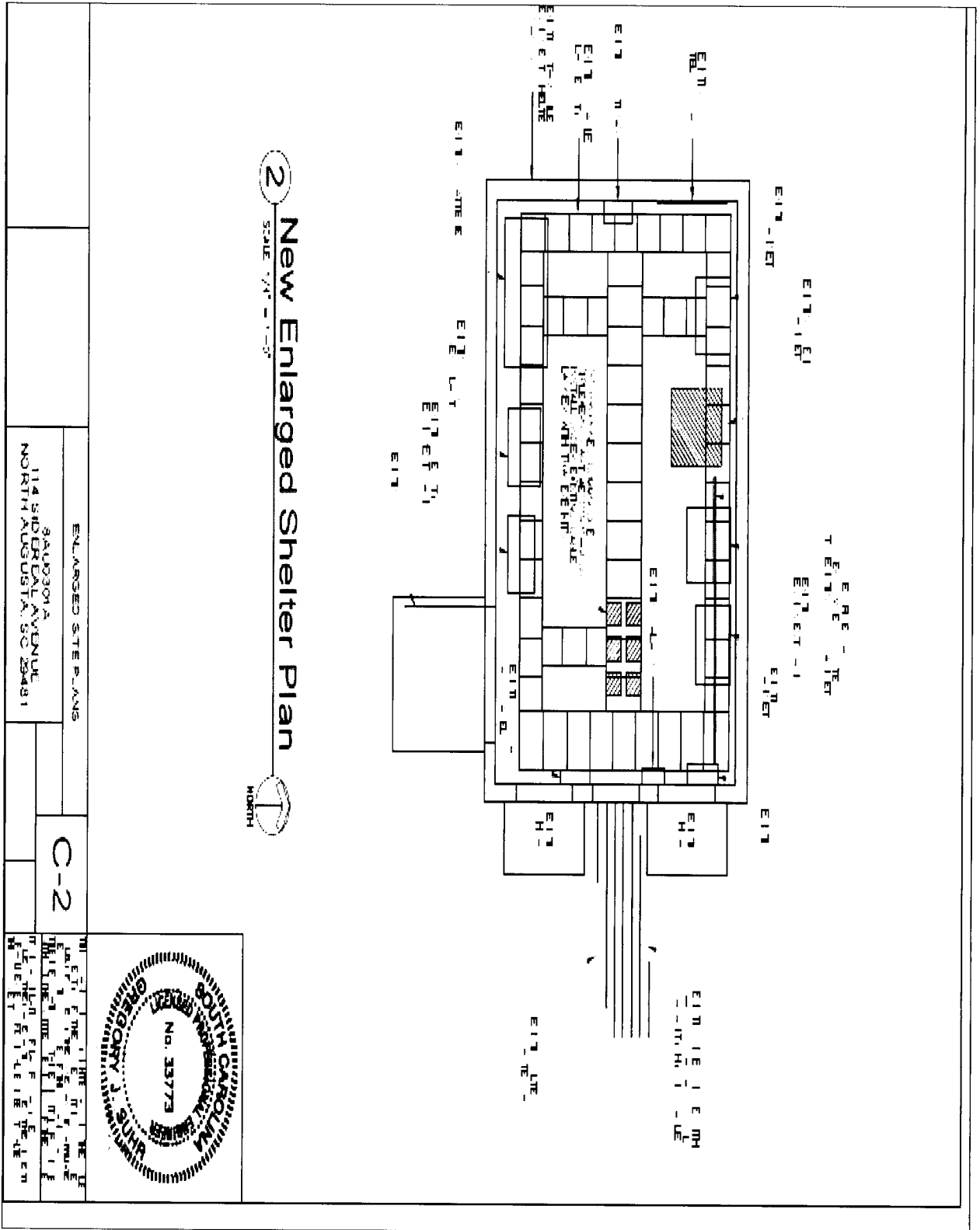


EXHIBIT "B"

732D_RUN_GSM_U2100 ON GROUND - TOWER TOP EQUIPMENT SCHEDULE

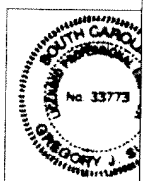
ANTENNA E.T.F.	ANTENNA VOLT	ANTENNA MODEL	ANTENNA DIM IN	ANTENNA WGT	V. BL.	IN. LEVEL	TYPE T. LEVEL	ANTENNA HGT E.T.F.
ALH4	1	HPHFA-100-100A			F1 RF	-	100'	100' - 100' HGT - 100' HGT E
	2	F-100-100-100-E			-	100' HGT - 100'	100' - 100' HGT E	
10T4	1	HPHFA-100-100A			F1 RF	-	100'	100' - 100' HGT - 100' HGT E
	2	F-100-100-100-E			-	100' HGT - 100'	100' - 100' HGT E	
100A	1	HPHFA-100-100A			F1 RF	-	100'	100' - 100' HGT - 100' HGT E
	2	F-100-100-100-E			-	100' HGT - 100'	100' - 100' HGT E	

-II-
F-100-100-100-E
T-100-100-100-E

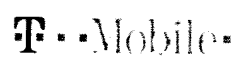
EQUIPMENT

THE EQUIPMENT SHALL BE INSTALLED AT THE LOCATION WITH THE FOLLOWING SPECIFICATIONS:
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EX. NO.	EX. DATE	EX. DESCRIPTION	EX. STATUS	T. TOTAL
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		100' HGT - 100'		
		100' HGT - 100'		



DEF 1		
DEF 2		
DEF 3		



ANTENNA SCHEDULE INC
 114 SHELTON LANE
 NORTH AUGUSTA, SC 29842

C-4

NO. 33773
 SOUTH CAROLINA
 DEPARTMENT OF TRANSPORTATION

IN WITNESS WHEREOF, Lessor and Lessee have executed this Water Tank Site Lease Agreement as of the date and year first above written.

LESSEE: T-MOBILE SOUTH LLC, A DELAWARE LIMITED LIABILITY COMPANY

WITNESS:

BY: _____

TITLE: _____

LESSOR: CITY OF NORTH AUGUSTA, SOUTH CAROLINA

WITNESS:

BY: _____

TITLE: _____

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Personally appeared before me _____
and made oath that _____ saw the within _____
sign, seal, and as _____ act and deed, deliver the within Agreement, and that _____ with
_____witnessed the execution thereof.

Sworn to before me this _____
day of _____, 2018.

Notary Public for _____
My Commission Expires _____

Personally appeared before me _____
and made oath that _____ saw the within _____
sign, seal, and as _____ act and deed, deliver the within Agreement, and that _____ with
_____witnessed the execution thereof.

Sworn to before me this _____
day of _____, 2018.

Notary Public for _____
My Commission Expires _____

STATE OF _____)

