

Requested by: Administration
Prepared by: Administration
Introduced: May 13, 2002
Public Hearing: May 29, 2002
Adopted: May 29, 2002
Vote: Unanimous; Patrick absent

**CITY OF WASILLA
ORDINANCE SERIAL NO. 02-30**

AN ORDINANCE OF THE CITY OF WASILLA, ALASKA, AUTHORIZING THE CITY OF WASILLA TO ENTER INTO A LEASE AGREEMENT WITH MATANUSKA-KENAI INC., dba MTA WIRELESS IN EXCHANGE FOR CELLULAR TELEPHONE SERVICE.

Section 1. Classification. This is a non-code ordinance.

Section 2. Purpose. To lease a portion of Lot 7, Block 2, Wasilla Woods Subdivision, according to Plat No. 71-25, filed in the Palmer Recording District, Third Judicial District, State of Alaska, to Matanuska-Kenai Inc., dba MTA Wireless, for the purpose of constructing operating and maintaining certain communication facilities.

Section 3. Special Term and Conditions. The terms and conditions are set forth in the Lease Agreement.

Section 4. Effective date. This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on May 29, 2002.

ATTEST:



SARAH PALIN, Mayor

[SEAL]



KRISTIE SMITHERS, CMC
City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is entered into by and between the **CITY OF WASILLA** (the "City") and **MATANUSKA-KENAI, INC. d/b/a MTA WIRELESS** ("Lessee").

WHEREAS, the City owns that certain real property described in Exhibit A attached hereto ("Property"); and

WHEREAS, Lessee desires to lease a portion of the Property described herein for the purpose of constructing, operating and maintaining certain communications facilities further described below (the "Facilities").

IN CONSIDERATION of the mutual agreements and consideration described herein, the receipt and sufficiency of which are hereby acknowledged, the City and Lessee agree as follows:

1. Premises. Upon the terms and conditions hereinafter set forth, the City hereby leases to Lessee the right to use certain real property located within the Property and more particularly described as follows:

A trapezoidal area outside of the existing water tower fenced in location with dimensions of approximately forty feet by twenty-eight feet by seventy-one feet by sixty-four feet, having an area of approximately two thousand one hundred and ninety square feet, plus a ten foot by twenty-nine foot equipment shelter located inside the fenced water tower location, having an area of approximately two hundred ninety square feet, as more specifically shown in the site plan in Exhibit B (the "Premises").

The City retains the right to use or lease the remainder of the Property for any legal purpose so long as the City's use or lease does not materially interfere with Lessee's construction, operation and maintenance of the Facilities on the Premises.

(a) Access. Upon the terms and conditions set forth in this Agreement, the City grants to Lessee a non-exclusive right of ingress and egress to the Premises on the existing road within the Property. Except as provided in this paragraph, no portion of the Property other than the Premises shall be used by Lessee without the express written consent of the City.

(b) Utilities and Easements. Lessee shall have the right, at its expense, to improve the present utility service on the Property in order to serve the Premises and the Facilities.

2. Encumbrances and Disclaimer. The Premises may be subject to zoning and building restrictions and governmental regulations now in effect or hereafter adopted by any governmental authority, including City. City makes no representations as to the suitability of the Premises for the purposes intended by Lessee. Lessee assumes the responsibility to determine the suitability of the Premises for their intended purpose.

3. Term. The initial term (the "Initial Term") of this Agreement shall begin on the date of the latest signature on this Agreement (the "Commencement Date") and shall run continuously until May 1, 2012. Lessee shall have the right to extend the term of this Agreement for three (3) consecutive terms of five (5) years each (each a "Renewal Term"). This Agreement shall automatically renew for each successive Renewal Term unless Lessee notifies the City of Lessee's intention not to renew at least thirty (30) days prior to the expiration of the Initial Term or Renewal Term, as applicable. Each Renewal Term shall be on the same terms and conditions as set forth herein except that rent payable after the Service Termination shall be adjusted as described in paragraph 4(b).

4. Consideration.

(a) Cellular Telephone Service. Commencing upon the Commencement Date, and continuing until the City terminates the Services (the "Service Termination"), Lessee shall provide cellular telephone service and equipment (collectively the "Services") to the City in accordance with the terms and conditions set forth in Exhibit C.

(b) Monthly Rent. For the first twelve (12) months (the "Measuring Period") following the effective date of the Service Termination, Lessee shall pay the City in advance on the first day of each month rent in an amount equal to the monthly amount that Lessee would have charged a retail customer for the Services in the month immediately preceding the Service Termination. All rent shall be paid without prior demand or notice and without any deduction or offset whatsoever.

(c) Annual Adjustments. The rent for each month of the next succeeding twelve (12) month period shall be increased by an amount equal to the greater of (i) three percent (3%) of the monthly rent charged for the previous twelve (12) month period, or (ii) the increase, if any, in the CPI, as calculated in paragraph (d) below.

(d) CPI. Increases in the Consumer Price Index ("CPI") shall be measured by the unadjusted Consumer Price Index for all Urban Consumers, All Items (1982-1984 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"). The Index for the first month of the immediately preceding Measuring Period shall be the "Base Index Number." The Index in effect for the last month immediately preceding Measuring Period shall be the "Current Index Number." The increase shall be the product obtained from multiplying the monthly rent immediately preceding the first day of each succeeding twelve (12) month period by the fraction whose numerator is equal to the Current Index Number and whose denominator is equal to the Base Index Number. If the Index is not in

existence at the time the determination is to be made, the parties shall use such equivalent price index as is published by a successor government agency in lieu of the Index; or, if no such price index is published, then the parties shall use a mutually acceptable equivalent price index as is published by a non-governmental agency.

5. Surveys and Testing. Lessee has the right, at its own cost, to perform surveys, soils and environmental tests and other engineering tests and procedures on, under, and over the Premises. If any defects are shown by such survey or tests which, in the opinion of Lessee, may adversely affect Lessee's use of the Premises, Lessee shall have the right to terminate this Agreement immediately upon written notice to the City and have no further obligation hereunder, provided, however, that Lessee shall be responsible for returning the Premises to the same condition they were in prior to the performance of such surveys or testing. With the exception of the trees removed during the soils analysis, which will be mutually agreed upon between both parties.

6. Licenses and Permits. The City agrees to cooperate with Lessee in obtaining and maintaining, at Lessee's expense, all licenses and permits required for Lessee's use of the Premises.

7. Compliance with Laws, Care of Premises.

(a) Lessee shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting the Premises, including, but not limited to, strict compliance with all FCC rules and regulations applicable to Lessee's operations, or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances or regulations which may be hereafter enacted involved a change of policy on the part of the governmental body enacting the same. Lessee agrees to defend and hold the City financially harmless from (1) the consequences of any violation of such laws, ordinances and/or regulations, and (2) from all claims for damages resulting from such violation.

(b) Lessee agrees that it shall keep the Premises in first-class order, condition and repair. Lessee agrees that in its use of the Premises, its obligations to maintain the Premises hereunder shall include, but not be limited to, the following: (1) not storing or stockpiling building material on the Premises; (2) not permitting for a period of any longer than 24 hours any inoperable motor vehicle or machinery or equipment of any kind to be stored, kept or parked on the Premises; (3) keeping the Premises and the surrounding area neat, clean and free of litter, debris, and rubbish; (4) keeping all garbage and refuse in appropriate, closed containers; and (5) using and maintaining the Premises so as not to create a public or private nuisance, or give the Premises an unsightly appearance, or adversely affect the value or character of the Premises or the Property.

8. Installation, Maintenance and Removal of Equipment.

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(a) Lessee shall have the right, at its expense, to erect and maintain on the Premises the improvements, personal property and facilities, including a tower, building, cable transmission lines (collectively the "Facilities") as described in Exhibit D attached hereto. Lessee shall erect, maintain and operate the Facilities in accordance with all applicable laws, regulates, rules and decisions of any federal state or municipal government. Annually, on each anniversary date of the Commencement Date, Lessee shall provide the City a written report showing the then current status of the site and any additions, changes or modifications made during the previous twelve (12) month period. The receipt of Lessee's annual report by the City shall not constitute approval by the City of actual or planned changes. Lessee shall promptly furnish to the City copies of all inspection reports required to be performed by Lessee in connection with the operation and maintenance of the Facilities.

(b) No structure or other improvement, which has not first received the written approval of the City, shall be constructed or maintained on the Premises, provided, however, that Lessee may make changes or additions to the equipment on the Tower and Building or inside the Building. Any changes or additions shall be performed with good engineering practices and workmanlike construction.

(c) Except as set forth in paragraph (b) above, no other additions to or alterations of the Facilities or other improvements erected on the Premises shall be commenced until plans and specifications covering the proposed addition or alteration have been first submitted to and approved in writing by the City. Any improvements constructed shall comply with all public laws, ordinances and regulations applicable thereto and shall be completed at the sole cost and expense of Lessee and without any cost, expense or liability of the City whatsoever.

(d) The approval by the City of any plans, specifications or plat plans refers only to the conformity of such plans and specifications to the general plan of the City for the Property and neighboring land of the City; such plans and specifications are not approved for architectural or engineering design and by approving such plans and specifications, the City assumes no liability or responsibility therefor, or for any defect in any structure constructed from such plans or specifications.

(e) Lessee will provide tower space for the City's site security equipment.

(f) The Facilities and all fixtures and improvements placed or attached in or about the Premises by Lessee, shall remain the property of Lessee until the expiration or sooner termination of the Agreement. Upon the expiration of the Initial Term, or any Renewal Term then in effect, provided Lessee is not then in default, Lessee shall have the right to remove the Facilities, fixtures and other improvements, provided all resulting injuries to the Premises and remaining improvements are completely remedied and the Premises reasonably restored to its natural state before the construction of the Facilities, fixtures and other improvements. Notwithstanding the above, at the expiration or sooner termination of the Initial Term, or any Renewal Term then in effect, the City may, at the City's election, demand the removal from the Premises, at the expense of Lessee, of all fixtures and improvements or of certain fixtures and

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improvements or both. A demand to take effect by the end of the expiration of the Initial Term, or any Renewal Term then in effect, shall be effected by a notice given any time within six (6) months before the expiration date. A demand to take effect on any other termination of the Agreement shall be effected by notice given in or concurrently with notice of termination. Upon the expiration or termination of this Agreement for any reason, Lessee shall have six (6) months from the effective date of such expiration or termination to remove the Facilities and all fixtures and improvements and restore the Premises as required under this paragraph.

9. Liens. Lessee will not permit any mechanics' laborers' or materialmens' liens to stand against the Premises or improvements for any labor or materials furnished to Lessee or claimed to have been furnished to Lessee or to Lessee's agents, contractors, or sublessees, in connection with work of any character performed or claimed to have been performed on said Premises or improvements by or at the direction or sufferance of Lessee; provided, however, that Lessee shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Lessee shall give to the City reasonable security as may be demanded by the City to insure payment thereof and prevent any sale, foreclosure or forfeiture of the Premises or improvements by reason of such nonpayment. Such security need not exceed one and one-half times the amount of such claim of lien released or judgment.

10. Co-location of Telecommunications Equipment. As partial consideration for the City entering into this Agreement, Lessee hereby agrees, to offer to third-parties, including the City the right to sublease Building and Tower space for the installation and operation of communications equipment (the "Co-location Rights"). Any such Co-location rights will be granted only with the consent of both the City and Lessee, which consent shall not be unreasonably withheld. Any grant of co-location rights to the City shall be on terms no less favorable to the City than those for any other Co-location Rights on the Premises.

(a) Lessee shall provide the City with a copy of each grant of Co-location Rights. The granting of Co-location Rights by Lessee shall, without limitation: (1) be in writing and duly executed by both parties; (2) set forth the names and addresses of the parties; (3) set forth the equipment to be used and what it is used for; (4) set forth the terms and conditions of the Co-location Rights, provided that, with respect to the rates charged for the Co-location Rights, Lessee shall certify in writing to the City that such rates comply with subsection (b) below, but shall not otherwise be required to disclose such rates to the City; (5) be subject to the terms and conditions of this Agreement; and (6) set forth such other information as the City may, in its discretion, require.

(b) As a condition to granting Co-location Rights, Lessee shall have the right to impose reasonable and customary fees, terms and conditions, including, without limitation, to require that:

(i) a co-locator's proposed use not be incompatible or cause interference with the rights of existing co-locators;

(ii) each co-locator share a proportionate share of the costs for utilities and other common expenses related to the Facilities and the Premises and abide by the reasonable rules and regulations imposed by Lessee in connection with the operation of the Facilities;

(iii) the installation and operation of the co-locator's equipment be in accordance with all federal, state and local laws, regulations and published policies; and

(iv) each co-locator agrees to cooperate with Lessee and any other co-locators in connection with the performance of any work at the Facilities.

11. Interference. Lessee acknowledges that the City maintains a water storage facility on the Property. Lessee shall not use, nor shall Lessee permit its employees, tenants, licensees, invitees or agents to use any portion of the Property in any way which interferes with the operations of the City on the Property. Upon notice from the City, Lessee agrees to take all actions necessary to promptly correct and eliminate said interference, at Lessee's cost. Such interference, if not corrected as required by the City, shall be deemed a material breach of this Agreement by Lessee. If any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to the City, and the City 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 Agreement immediately upon notice to Lessee.

12. Environmental Compliance. Lessee covenants and agrees as follows:

(a) During Lessee's possession of any part of the Premises, there has not been and will not be any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by Lessee, its employees, tenants, licensees, invitees or agents, on, under, or about the Premises, except to the extent such activity is conducted in compliance with all applicable laws.

(b) Lessee agrees to indemnify, defend, and hold harmless Beneficiary against any and all claims, losses, liabilities, damages, penalties, and expenses which the City may directly or indirectly sustain or suffer resulting from a breach of this Section 12.

(c) The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.* ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, the Resource Conservation and Recovery Act, 49 U.S.C. § 6901, *et seq.*, or other applicable environmental laws.

(d) The provisions of this Section 12, including the obligation to indemnify, shall survive the expiration or termination of this Agreement.

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13. Taxes.

(a) The City shall pay when due the real property taxes and fees and assessments attributable to the Property.

(b) Lessee shall pay when due all property taxes and fees and assessments attributable to the Premises and all taxes assessed against and on any and all personal property, trade or business fixture in the possession of Lessee or installed by or for Lessee upon or about the Premises, including, without limitation, the Facilities.

14. Insurance.

(a) Lessee shall, at Lessee's expense, purchase and maintain throughout the Initial Term, and any Renewal Term, of this Agreement, commercial liability insurance in an aggregate amount of Two Million Dollars (\$2,000,000) and name the City as an additional insured on the policy or policies. Lessee may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Lessee may maintain. Lessee agrees to furnish copies of certificates evidencing insurance coverage to the City automatically, without demand of the City. It is understood and agreed that procurement and maintenance of the public liability insurance required by this provision does not supersede, extinguish or discharge Lessee's duties to protect, defend, indemnify and save harmless the City under Section 15 of this Agreement.

15. Indemnification. Lessee shall defend, indemnify and hold harmless the City, and its employees and agents from and against all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including, without limitation, reasonable attorneys' fees and expenses) of any kind or nature whatsoever, suffered or incurred by any of such indemnified parties, based upon or arising out of or related to Lessee's Agreement, use or occupancy of the Premises, except to the extent such claims arise from the negligent or intentional acts or omissions of the City, its agents or independent contractors.

16. Title. The City represents and warrants that it has full right, power and authority to execute this Agreement and has good and unencumbered title to the Premises, free and clear of any liens, encumbrances and mortgages except as set forth in Exhibit E attached hereto.

17. Quiet Enjoyment. If Lessee pays the fees and all other charges provided for in this Agreement, performs all of its obligations under and observes all of the other provisions of this Agreement, Lessee shall be entitled to the peaceful use and quiet enjoyment of the Premises in accordance with the terms of this Agreement without any interruption or disturbance whatsoever.

18. Termination. Except as otherwise provided herein, this Agreement may be terminated, without penalty or further liability, on ten (10) days written notice by either party,

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upon a default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days (except for the payment of rent which must be cured within ten (10) days) of receipt of written notice of default (without limiting any other rights available to the parties pursuant to any other provisions hereof).

19. Condemnation. If a condemning authority takes all or any part of the Premises, this Agreement shall terminate as of the date title vests in the condemning authority. No portion of the condemnation award for the Premises (*i.e.*, the ground) shall belong or inure to the benefit of Lessee. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.

20. Assignment. Lessee may not assign, sublease, or otherwise transfer this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

21. Notice of Sale. Prior to selling the Property, the City shall notify Lessee in writing and give Lessee the opportunity to bid on the Property.

22. Successors. This Agreement shall run with the Premises and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, personal representatives, heirs and assigns.

23. Entire Agreement. This Agreement and the exhibits, if any, attached hereto and forming a part hereof, set forth all the promises, agreements, and understandings between the City and Lessee concerning the construction, installation, maintenance and operation of Lessee's Facilities on the Premises. No alteration, amendment, change or addition to this Agreement nor any surrender of the term, shall be binding upon the City or Lessee unless reduced to writing and signed by them. This Agreement shall be governed by the laws of the State of Alaska. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement.

24. Further Documents. The City shall execute any documents (including without limitation a memorandum of Agreement) necessary to protect Lessee's rights hereunder or Lessee's use of the Premises. The City acknowledges that a memorandum of Agreement may be recorded in the records of the recording district where the Property is located. If Lessee records a memorandum of this Agreement, promptly upon the expiration or earlier termination of this Agreement, Lessee shall cause a notice of such termination to be recorded.

25. Severability. If any provision of this Agreement is held to be invalid, such invalidation shall not affect the other provisions of this Agreement.

26. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of personal delivery, on the third (3rd) day after deposit in U.S. Mail if mailed by registered or certified mail, postage prepaid

and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by such courier service for next morning delivery, or on the same day sent by facsimile (if confirmed by telephone) and if addressed to a party at his address stated on the signature page of this Agreement or at any other address as any party may specify for this purpose by notice to the other party.

27. References. As used in this Agreement, references to the singular shall include the plural and vice versa, and references to the masculine gender shall include the feminine and neuter genders and vice versa, as appropriate.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by its duly authorized officer on the dates written below to be effective as of the date of the latest signature below.

THE CITY OF WASILLA

By: _____

Title: Sarah Palin, Mayor

Date: _____

290 East Herning Avenue
Wasilla, Alaska 99654
Telephone: (907) 373-9055
Facsimile: (907) 373-9096

MATANUSKA-KENAI, INC. d/b/a MTA Wireless

By: _____

Title: _____

Date: _____

701 East Parks Highway, Suite 100
Wasilla, Alaska 99654
Telephone: (907) 373-2355
Facsimile: (907) 373-2357

STATE OF ALASKA)
) ss:

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THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of May, 2002, by Sarah Palin, Mayor of the City of Wasilla, an Alaska municipal corporation, on behalf of the City.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)

) ss:

THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of May, 2002, by _____, _____ of Matanuska-Kenai, Inc. d/b/a MTA Wireless, an Alaska cooperative corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

EXHIBIT A

Property Description

Lot Seven, Block Two, Wasilla Woods Subdivision, according to Plat No. 71-25, filed in the Palmer Recording District, Third Judicial District, State of Alaska.

EXHIBIT B

Premises Description and Site Map

Plot plan as prepared by Edward A. McCain, dated March 20, 2002, as attached.

S33 S34

N89°59'40"E 657.95ft
N89°59'40"E 658.34ft

FND. COPPERWELD MON.
S.E. LOT 15A TRAVERS SUBD.
40.00ft
40.00ft

FND. B.C. MON. 4
LUCILLE ST.
365.00ft

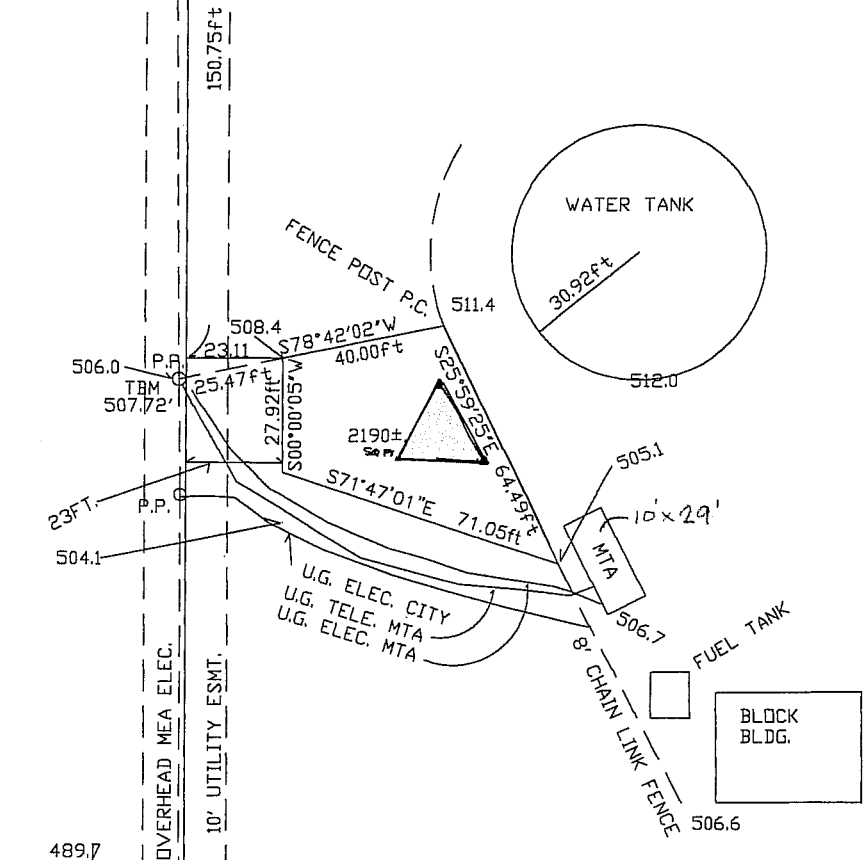
SPRUCE DR.

N00°00'20"W 40.00ft
N00°00'20"W 40.00ft

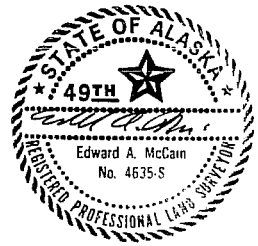
S89°59'40"W 325.00ft

MTA CELL SITE

LOT 7 BLK. 2 WASILLA WOODS SUBD.



EDWARD A. MCCAIN SURVEYING
P.O. BOX 27
WILLOW, ALASKA 99688
907-733-1318



LEGEND

SCALE 1" = 30 FT.
 ○ FND. 1/2" REBAR
 ● FND. 5/8" REBAR
 ○ SET 5/8" REBAR
 FOUND
 RECORD
 0.00 ELEV.
 JOB # 02-07
 MAR. 20, 2002

RECEIVED
 APR - 1 2002
 PLANNING OFFICE
 CITY OF WASILLA

EXHIBIT C

Cellular Service Agreement

Lessee shall provide the following services:

1. 3000 minutes per month of cellular telephone service for calls originating and terminating within the MTA Wireless service area, with each additional minute being billed at \$0.20 cents or a rate more favorable;
2. 15 digital cellular telephones, of the latest model that MTA wireless presently offers to its retail customers, each of the 15 cellular phones shall be provided with at least three calling features like voice mail, caller ID or call forwarding, additional phones being charged at cost;
3. Space on the tower for a City owned security camera, motion detector, alarming mechanism or similar devices at no charge to the City;
4. The current cell tower which MTA has located on the City water tower shall convert to City ownership for its use at no cost to the City upon activation of their new tower referred to in this agreement.

Exhibit D

Facility Description: MTA Wireless Wasilla Water Tower Cell Site

MTA Wireless plans to install a 180 foot self supporting tower to the northwest of our existing cellular equipment shelter. This will enable MTA Wireless to upgrade this site to a sectored cellular site. The tower will be also used to provide microwave backup connecting to our MTSO switch and our core sites. This will enable us to remain in service should there be a cable cut or other emergency causing loss of copper connectivity.

The existing MTA Wireless equipment shelter which measures approximately 10'X29' will remain at it's present location. The shelter houses our radio equipment as well as a standby diesel generator.

At the present time MTA Wireless has a tower and cellular antennas mounted atop the City of Wasilla's water tower. The tower and antennas will be removed after the new installation has been completed and tested.

EXHIBIT D

The Facilities Description

EXHIBIT E

Mortgages and Encumbrances on Property (if any)

NONE