

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2790**

**ORDINANCE GRANTING AMENDMENT NO. 1 TO  
TIDELAND USE AND OCCUPANCY PERMIT FOR  
TELECOMMUNICATION SITES BETWEEN THE  
SAN DIEGO UNIFIED PORT DISTRICT AND  
SPRINT PCS ASSETS, LLC AMENDING THE  
PROJECT LOCATION AND UPDATING LEASE  
LANGUAGE**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

**WHEREAS**, Sprint PCS Assets, LLC (Sprint) has a Tideland Use and Occupancy Permit (TUOP) with the District to install, operate and maintain a wireless telecommunications facility in Embarcadero Marina Park South (EMPS), on file in the Office of the District Clerk, as Document No. 56867; and

**WHEREAS**, the original premises (Premises) was located adjacent to the basketball court in EMPS; and

**WHEREAS**, since the TUOP's execution, staff has worked with Sprint to optimize the design and location of the cellular antenna; and associated equipment room, and location of the same and therefore, Sprint has agreed to relocate the Premises; and

**WHEREAS**, the TUOP is proposed to be amended pursuant to the following:

1. The description of the Premises in the Preamble: Delete the existing description of the Premises and add a revised description of the Premises to reflect the relocation of the cellular tower and associated equipment room.
2. Exhibits: Deleting Exhibit A, Project Location and including a new Exhibit A, Project Location to reflect the new Premises.

3. TUOP Paragraph 3: Delete the existing Paragraph 3, Rent Adjustments, and add a new Paragraph 3, Rent Adjustments, to provide that for each five-year option period, the annual rent shall increase annually by an amount equal to three percent (3%) of the annual rent in the preceding twelve month period. Each subsequent three percent (3%) increase shall be based on the previous year's rent and shall occur annually on the 1st day of October during the term of the TUOP, and during the term of each option period.
4. TUOP Paragraph 12: Delete the existing Paragraph 12, Hold Harmless, and add a new Paragraph 12, Hold Harmless, which includes the District's updated hold harmless and indemnity language.
5. TUOP Paragraph 15: Delete the existing Paragraph 15, Conformance with Laws and Regulations, and add a new Paragraph 15, which includes, among other things, the District's interim sustainable leasing language; such language includes the acknowledgement of the District's Climate Action Plan (CAP), and requires that if a future amendment to the TUOP is necessary, Sprint and the District shall also negotiate an amendment to the TUOP for the purpose of adding as a tenant obligation the adoption, implementation and monitoring of specific operational requirements of the type generally described in the CAP and consistent with the objectives of the CAP; provided, however, such requirements must be commercially reasonable and feasible and consistent with both the CAP and the allowable uses and terms and conditions of the TUOP.

**WHEREAS**, staff has reviewed all of the proposed amendment and recommends the Board of Port Commissioners grant the proposed amendment to the TUOP.

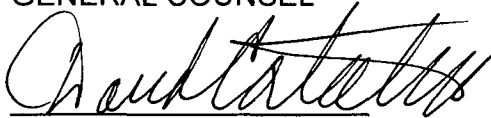
**NOW THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. That the Agreement for Amendment of Tidelands Use and Occupancy Permit for Telecommunication Sites Amendment No. 1 between the San Diego Unified Port District and Sprint PCS Assets, LLC to: 1) Identify a new Premises; 2) to update Exhibit A, project location to reflect the new premises; 3) update the rent structure to provide that for each five-year option period, the annual rent shall increase annually by an amount equal to three percent (3%) of the annual rent in the preceding twelve month period; 4) update the hold harmless requirements to the District's current standards; and 5) update the conformance with laws and regulations requirement to include the District's interim sustainable leasing language is hereby granted and approved.

Section 2. The Executive Director or his designated representative is hereby directed to execute the Agreement for Amendment of Tidelands Use and Occupancy Permit for Telecommunication Sites Amendment No. 1 on behalf of the San Diego Unified Port District.

Section 3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL



By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of October 2014, by the following vote:

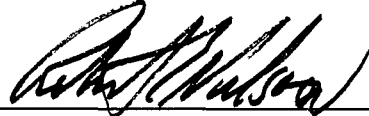
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: None.

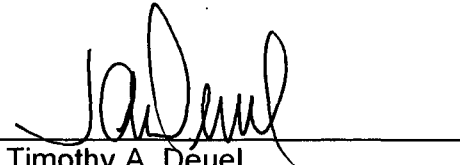
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk



(Seal)