

ORDINANCE NO. 6095

**AN ORDINANCE AUTHORIZING THE LEASE OF REAL PROPERTY
AND EASEMENT TO SPRINTCOM, INC. FOR SITING OF
COMMUNICATIONS SERVICE EQUIPMENT WITHIN THE WEEKS
FIELD CELL TOWER LEASE SITE**

WHEREAS, the City owns a portion of Block 135, Weeks Field Subdivision, containing a total area of 21,708 square feet; and

WHEREAS, in 2008, the City leased a portion of that property (measuring 30' by 40') to Alaska Digital for a cellular communications tower by executing the Non-Exclusive Lease Tower & Equipment Space ("Non-Exclusive Lease"), approved by Ordinance No. 5758; and

WHEREAS, the Non-Exclusive Lease, assigned by Alaska Digital to Vertical Bridge Towers III, LLC (Vertical Bridge), provided that the lessee had the exclusive right to co-locate other commercial users on its tower but that the City retained the right to lease the ground space to co-locatees of the lessee; and

WHEREAS, SprintCom, Inc. wishes to sublease space on Vertical Bridge's cell tower and wishes to lease approximately 10' by 15' of ground space within the Non-Exclusive Lease area for siting its communications service equipment; and

WHEREAS, leases of this type were envisioned when the City executed the Non-Exclusive Lease to Digital in 2008 and are the only practical use of this small parcel of land; and

WHEREAS, SprintCom, Inc.'s operation requires the installation of buried electrical conduit from a newly installed GVEA power pole to its communications service equipment, and, therefore, Sprint.Com requests an easement for the buried conduit across the area shown in Exhibit A of the proposed Grant of Easement; and

WHEREAS, FGC Sec. 70-41 authorizes the City to lease city owned real property, and FGC Sec. 70-42(b) specifies that any lease be made by authority of an ordinance.

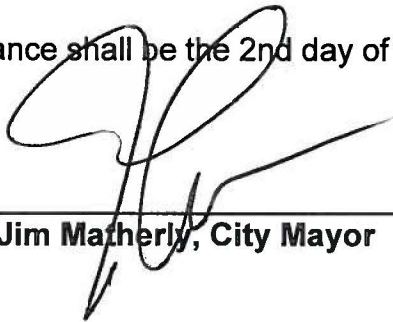
NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That a lease and an easement, substantially in the form shown in Attachments A and B, are hereby authorized by the Council, providing for an initial five-year lease term with three options to extend for the same period.

Section 2. That the Mayor is authorized and directed to execute the lease and easement on behalf of the City, and the City Clerk is authorized to attest and affix the City Seal to

the instrument, the execution of which shall take place not less than 30 days after the effective date of this ordinance, as prescribed by Section 8.3 of the city Charter and FGC 70-56.

Section 3. That the effective date of this Ordinance shall be the 2nd day of March 2019.




Jim Matherly, City Mayor


AYES: Rogers, Ottersten, Therrien, Pruhs, Cleworth, Kun
NAYS: None
ABSENT: None
ADOPTED: February 25, 2019

ATTEST:

APPROVED AS TO FORM:



D. Danyielle Snider, MCC, City Clerk



Paul J. Ewers, City Attorney

ATTACHMENT A ORDINANCE NO. 6095

SITE LEASE

City of Fairbanks
and
SprintCom, Inc.

The City of Fairbanks, a municipal corporation of the State of Alaska, 800 Cushman Street, Fairbanks, Alaska 99701 (the "City"), and SprintCom, Inc., a Kansas corporation, 6391 Sprint Parkway, Overland Park, Kansas 66251-2650 ("Tenant"), are entering into the following Site Lease ("Lease") to provide Tenant ground space over and above City-owned property located in Fairbanks, Alaska, under the following terms and conditions:

1. **LEASE AREA.** The City hereby leases to Tenant a parcel ("Leased Premises") measuring approximately 10 feet by 15 feet, as shown in Exhibit B, situated within the parcel ("Property") subject to the Non-Exclusive Lease Tower & Equipment Space, dated February 24, 2009, between the City and Vertical Bridge Towers III, LLC (original lessee Alaska Digitel, Inc.) (hereinafter "City/Vertical Bridge Lease") as shown in Exhibit A and described as:

A Parcel of land measuring 30' x 40' situated coincident in length with the South boundary of the real property described below, such that the West edge of said Parcel lies 139.3' East of the West boundary of the following described real property:

A portion of Block 135, Weeks Field Subdivision according to the plat filed as instrument number 145.508, Records of the Fairbanks Recording District, more particularly described as follows:

Commencing at the SW corner of block 114 according to the official survey of the Townsite of Fairbanks; Thence South 42° 43' West a distance of 59.38 feet to a point; Thence South 59° 26' East a distance of 14.48 feet to a POINT OF BEGINNING; Thence South 38° 38' West a distance of 25 feet along the East right of way of Kellum Street, as shown on the plat of Weeks Field Subdivision filed as Instrument Number 147.252, to a point; Thence South 50° 31' East a distance of 390.05 feet to an intersection with the West right of way of Cowles Street, as shown on the survey of the Townsite of Fairbanks; Thence North 39° 29' East along said West line of Cowles Street 86.23 feet to a point; Thence North 59° 26' West a distance of 395.19 feet to the POINT OF BEGINNING.

The City hereby acknowledges and agrees that Tenant will be subleasing space on a tower owned by Vertical Bridge that is located on the Property, pursuant to that certain Site Lease Agreement between Tenant and Vertical Bridge dated _____.

2. **PERMITTED USE; ACCESS.** The Leased Premises will be used by Tenant for the purpose of installing, removing, replacing, modifying, maintaining, operating, and siting

communications service facilities, including, without limitation, antennas and microwave dishes, air conditioned equipment shelters and/or base station equipment, cable, wiring, power sources (including permanent generators and fuel storage tanks), related equipment and structures (“Tenant Facilities”). Tenant shall hold title to the Tenant Facilities, and all of the Tenant Facilities shall remain Tenant’s personal property and are not fixtures. Tenant may install coaxial cabling on the City’s Property, as part of the Tenant Facilities, to connect the Tenant Facilities located in the Leased Premises with Tenant’s antenna equipment located on the tower owned by Vertical Bridge. The City will not impede Tenant’s access to the Leased Premises, and subject to the terms of the City/Vertical Bridge Lease, the City grants to Tenant, Tenant’s agents, employees, and contractors a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the Property. Tenant must maintain the Leased Premises in a clean, safe condition at all times. Unless specifically addressed, nothing in this Lease modifies or limits the City’s rights under the City/Vertical Bridge Lease.

3. TERM. This Lease becomes effective on the full execution of the Lease (the “Effective Date”). The initial term of the Lease will be for five years starting on the Effective Date (“Term”). The Term will be automatically renewed for 3 additional terms of 5 years each (each a “Renewal Term”), unless Tenant provides the City with notice of its intention not to renew at least 30 days prior to the expiration of the initial Term or any Renewal Term.

4. RENT. Tenant shall pay the City \$750 per month for the initial lease Term. Rent will increase for any subsequent Renewal Term based upon the increase in the Anchorage, Alaska, consumer price index (CPI-U), cumulative for the preceding five years of the Lease term. In no event will the rent decrease.

5. TERMINATION.

5.1. Destruction of the Premises. In the event the Tenant Facilities are destroyed, Tenant will have no duty to restore its facilities, and this Lease will end. Tenant may elect to restore its Tenant Facilities, and if it does, this Lease will continue in force. In either event, the Parties have no duty to each other for loss of operation.

5.2. Termination by Tenant. Tenant may, at its sole option, terminate this Lease by written notice delivered to the City 90 days in advance of such termination. In such event, Tenant shall quit the Leased Premises, removing all equipment and leaving the Leased Premises in the condition preexisting this Lease, less reasonable wear and tear, bearing all costs arising therefrom. In the event of a default by the City beyond all applicable notice and cure periods, Tenant may pursue any remedies available to it against the City at law and in equity, including, but not limited to, the right to immediately terminate this Lease. Notice of default must be conveyed in writing to the City, providing a 30-day grace period during which the City may cure the default and restore

compliance with the Lease, provided that the grace period will be extended if the City has commenced to cure the default within such 30-day period and diligently pursues the cure to completion.

5.3. Termination by the City. Except as provided elsewhere in this Lease, the City may terminate this Lease in the event of default by Tenant beyond all applicable notice and cure periods. Notice of default must be conveyed in writing to Tenant, providing a 30-day grace period during which Tenant may cure the default and restore compliance with and continuance of the Lease. Should Tenant fail to cure the default by the end of the grace period, the Lease will terminate, and Tenant shall quit the site, removing all equipment and leaving the Leased Premises in the condition preexisting this Lease, less reasonable wear and tear, bearing all costs arising therefrom. Notwithstanding the foregoing, if a non-monetary default cannot reasonably be cured within a 30-day period, this Lease may not be terminated if Tenant commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

6. IMPROVEMENTS. Tenant may, at its expense, make improvements on and to the Leased Premises as it deems necessary or desirable for the operation of its Tenant Facilities. The City will not be entitled to any increase in rent due to the installation, modification, upgrade, or expansion of the Tenant Facilities, unless they are installed outside of the Leased Premises, with the understanding that the Leased Premises includes all of Tenant's leased area and rights to Tenant's facilities under this Lease, or unless such installation, modification, upgrade, or expansion is different in scope or purpose from Paragraph 2 above ("Permitted Uses"). Notwithstanding the foregoing, the City grants Tenant a non-exclusive easement over the Property to install coaxial cabling on the Property outside the Leased Premises in order to connect the Tenant Facilities to Tenant's antenna equipment located on the tower owned by Vertical Bridge. The terms and conditions relating to Tenant's installation of its antenna facilities on the tower will be governed by Tenant's site lease agreement with Vertical Bridge.

7. ASSIGNMENT/SUBLETTING. Tenant may not assign any of its rights or obligations under this Lease and may not sublet any portion of the Leased Premises without the written permission of the City, which permission will not be unreasonably withheld; provided, however, that Tenant will have the right, without notice to or consent of the City, to sublease (or otherwise transfer or allow the use of) all or any portion of the Leased Premises or assign its rights under this Lease in whole or in part to: (a) any entity controlling, controlled by or under common control with Tenant; (b) any entity acquiring substantially all of the assets of Tenant; (c) any successor entity in a merger or consolidation involving Tenant.

8. EXCULPATION AND INDEMNITY.

8.1. Exculpation. The City shall not be liable to Tenant for any loss or damage to Tenant, its employees, contractors, agents, or property caused by direct acts or negligence of the Tenant,

its employees, contractors, or agents except to the extent such loss or damage is due to acts or omissions of the City. Except as set forth above, Tenant shall bear all risk of loss as to its personal property, connected to, stored or remaining on or near the Leased Premises.

8.2. Indemnity. Tenant shall defend and hold the City harmless from all damages arising out of any damage or injury to any person or property occurring in, about, or on the premises, caused by Tenant, its employees, contractors, or agents, to the extent such damages are not due to acts or omissions of the City. The City shall defend and hold the Tenant harmless from all damages arising out of acts or omissions of the City, its employees, contractors, or agents, to the extent such damages are not due to acts or omissions of the Tenant.

9. INSURANCE. During the initial term and all renewal terms, Tenant will procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate, and will name the City as an additional insured on such policy. Within 30 days after receipt of a written request from the City, the Tenant will provide the City with a Certificate of Insurance evidencing the required coverage. Tenant will cause the insurance policy obtained by it to provide that the insurance company waives all rights of recovery by subrogation against the City in connection with any damage covered by the policy.

10. RELATIONSHIP OF THE PARTIES. The relationship between the parties is solely that of landlord and tenant and cannot be construed to be a joint venture, partnership, or other legal entity.

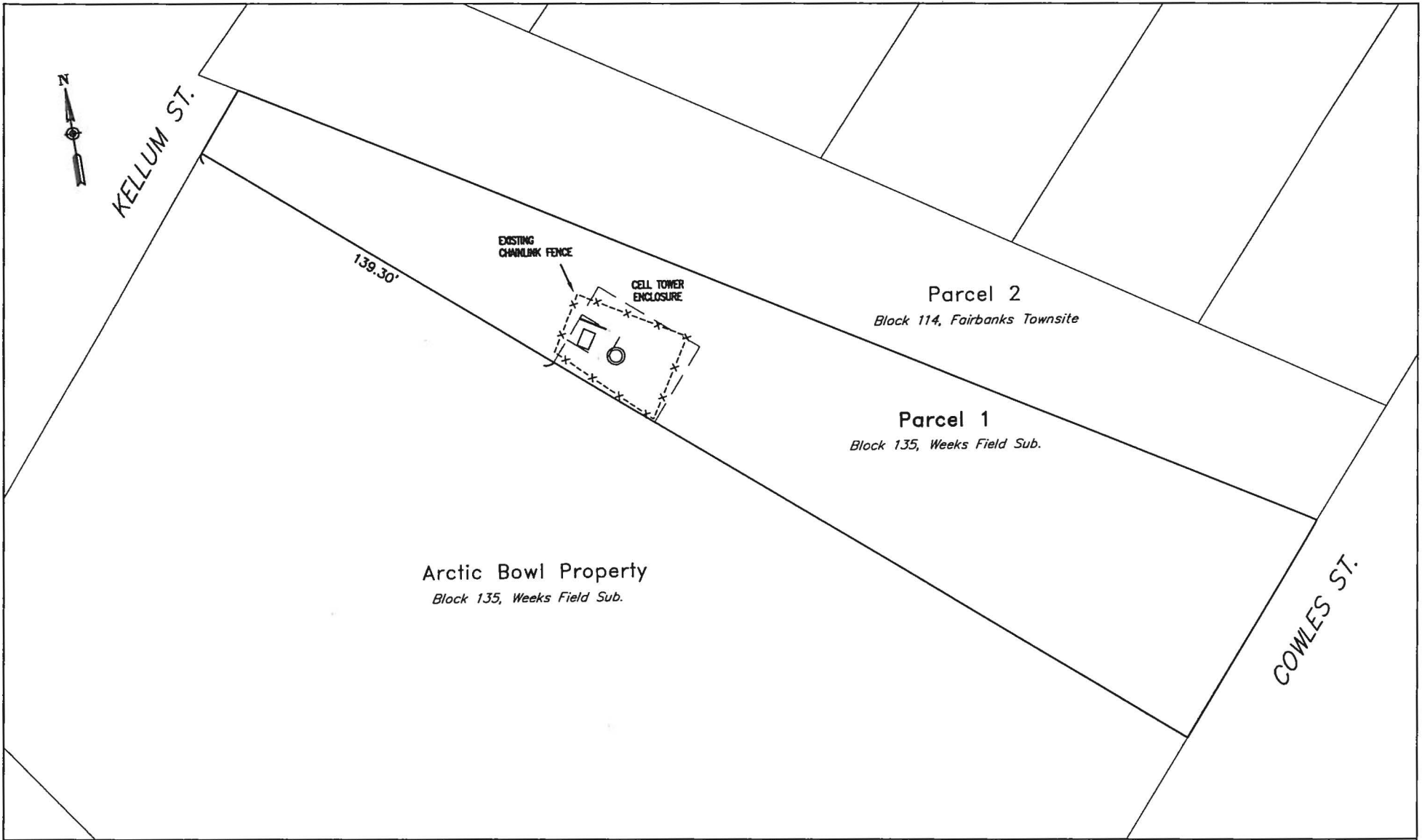
11. WARRANTY. It is understood and agreed that there is no guarantee or warranty whatsoever by the City related to or concerning the communications performance or coverage resulting from Tenant's use of the lease site, tower, or associated facilities.

12. WAIVER. No course of dealings or failure of either party to strictly enforce any term, right, or condition of this Lease may be construed as any waiver of such right, term, or condition.

13. NOTICES. Any notice required or permitted under this Lease will be in writing and sent by certified mail or by courier addressed to the respective parties as follows:

City of Fairbanks
Property Manager
800 Cushman Street
Fairbanks, AK 99701

With a copy to
City Attorney
800 Cushman Street
Fairbanks, AK 99701



DATE	REVISION	BY

SCALE: 1" = 30' HORIZ.

 Scale (Feet)

DRAWN: W.H.I.
 CHECKED:
 DATE: 02/06/19

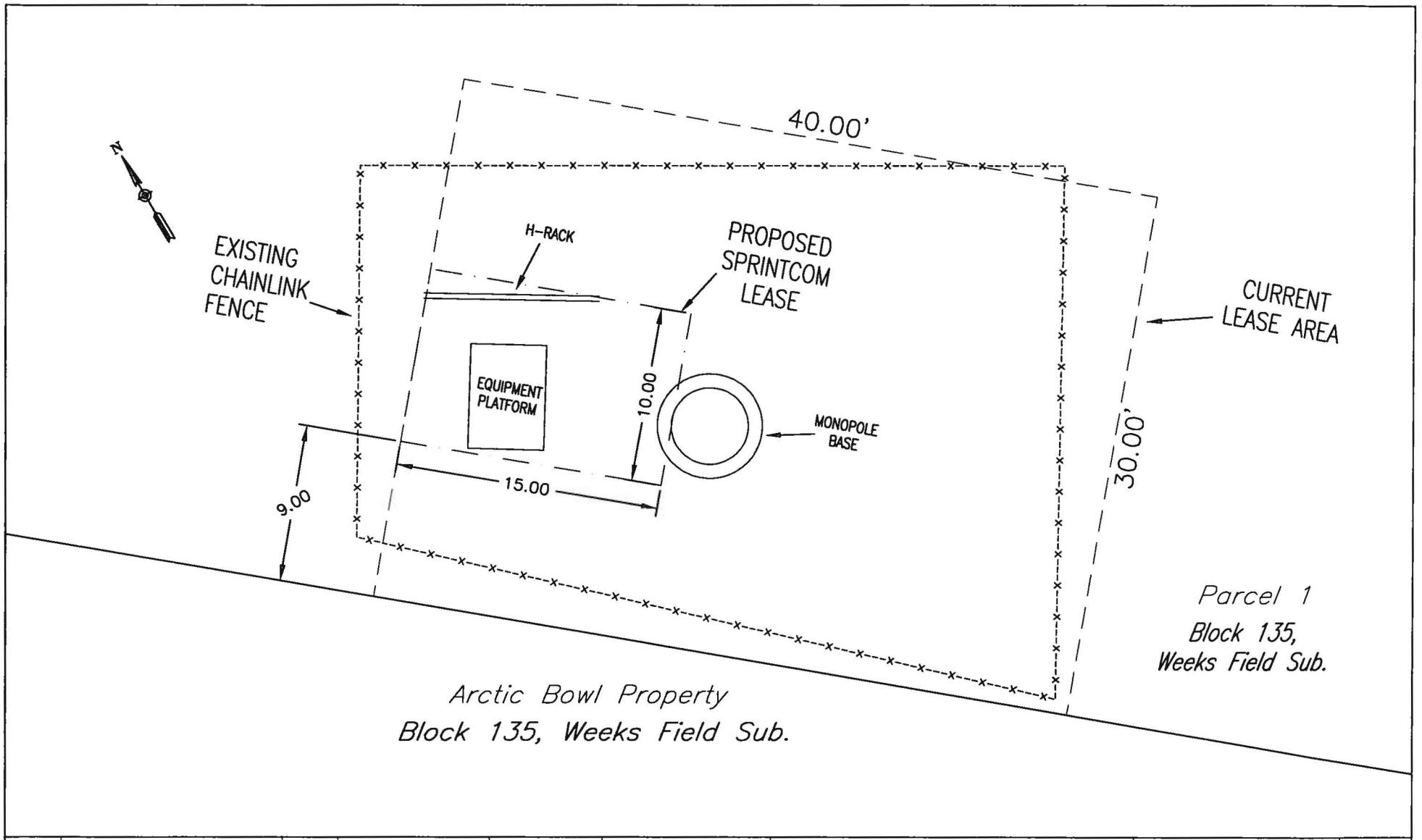
APPROVED

 CITY ENGINEER
 DATE

LEASE EXHIBIT A

CITY OF FAIRBANKS, ALASKA
 Engineering Department

1 OF
 2 SHEETS



Arctic Bowl Property
Block 135, Weeks Field Sub.

Parcel 1
Block 135,
Weeks Field Sub.

SCALE: 1" = 5' HORIZ. 			DRAWN: W.H.I. CHECKED: DATE: 02/06/19	APPROVED _____ CITY ENGINEER DATE	<u>LEASE EXHIBIT B</u>	CITY OF FAIRBANKS, ALASKA Engineering Department	1 OF 2 SHEETS
DATE	REVISION	BY					

ATTACHMENT B ORDINANCE NO. 6095

Record: Fairbanks Recording District

GRANT OF EASEMENT

THIS EASEMENT is entered into this ____ day of _____ 2019 by and between City of Fairbanks, 800 Cushman Street, Fairbanks, Alaska 99701, as GRANTOR, and SprintCom, Inc., a Kansas corporation, 6391 Sprint Parkway, Overland Park, Kansas 66251-2650, as GRANTEE;

The GRANTOR, for good and valuable consideration, being seized in title, and duly authorized, has this day granted an easement for buried electrical conduit to the GRANTEE for the purpose of supplying power to Grantee's facility located on the Weeks Field cell tower location, as described below, and as depicted on the attached "Exhibit A" to this grant of easement (the "easement area"):

A strip of land approximately 108 feet in length and 15 feet wide, as shown more specifically in Exhibit A to this grant of easement.

Special Provisions:

1. No Liability of Grantor. Grantor shall not be liable to Grantee for any loss suffered or arising from claims made by the public or Grantee upon the easement area, without limitation.
2. Sole Purpose: Installation, maintenance, operation, and removal of buried electrical conduit to supply power from the existing GVEA power pole to Grantee's facility at the Weeks Field Cell Tower site.
3. Maintenance and Repair. All repairs, including replacement of electrical conduit within the easement area and the improvements located therein and all costs related thereto shall be performed and borne by Grantee, at no cost to Grantor.
4. No Interference. Grantee and its employees, agents, and contractors shall, in exercising Grantee's rights hereunder or conducting any activities within the easement area, minimize to the greatest extent practicable the duration and degree of any interference with use and enjoyment of the property by Grantor or any other lessee. Prior to performing any work in (other than routine maintenance of) the easement area, Grantee shall give Grantor at least two days' advance written notice, except in emergency situations. Emergency situations shall require only such advance notice as is reasonable under the circumstances.
5. Indemnification. To the greatest extent permitted by law, and only to the extent that this provision does not adversely affect the validity or binding nature of this Easement, Grantee agrees to indemnify, defend, and hold harmless Grantor for any causes of action, claims, damages, and losses, of whatever kind or nature, relating to or arising from any activities conducted within the easement area by Grantee or its employees, agents or contractors to the extent such causes of action, claims, damages, and losses are not due to acts or omissions of the Grantor.

6. Covenants Running with the Land. This Easement, including without limitation the restrictions, limitations, covenants, and agreements applicable thereto, is intended to be and shall be construed as covenants (and not conditions) running with the land, binding upon, inuring to the benefit of, and enforceable by the parties, and their respective successors, assigns, and personal representatives, including without limitation all subsequent owners of the easement area.

7. Entire Agreement and Construction. This Easement constitutes the entire agreement between the parties with respect to the subject matter hereof.

8. Modification. No modification of this Easement shall be binding upon any party unless in writing and signed by both Grantor and Grantee, or their respective successors or assigns.

9. Severability. If any provision of this Easement is invalid or unenforceable as against any person, party, or under certain circumstances, the remainder of this Easement and the applicability of such provision to other persons, parties, or circumstances shall not be affected thereby and shall remain in full force and effect.

10. Notices. Any notice, request, demand, instruction, or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and served either personally or sent by United States registered or certified mail, return receipt requested, postage prepaid or by pre-paid nationally recognized overnight courier service, and addressed to the parties at their respective addresses set forth above.

RESERVING UNTO THE GRANTOR any uses not in conflict with the purposes and operations of Grantee.

**GRANTOR
CITY OF FAIRBANKS**

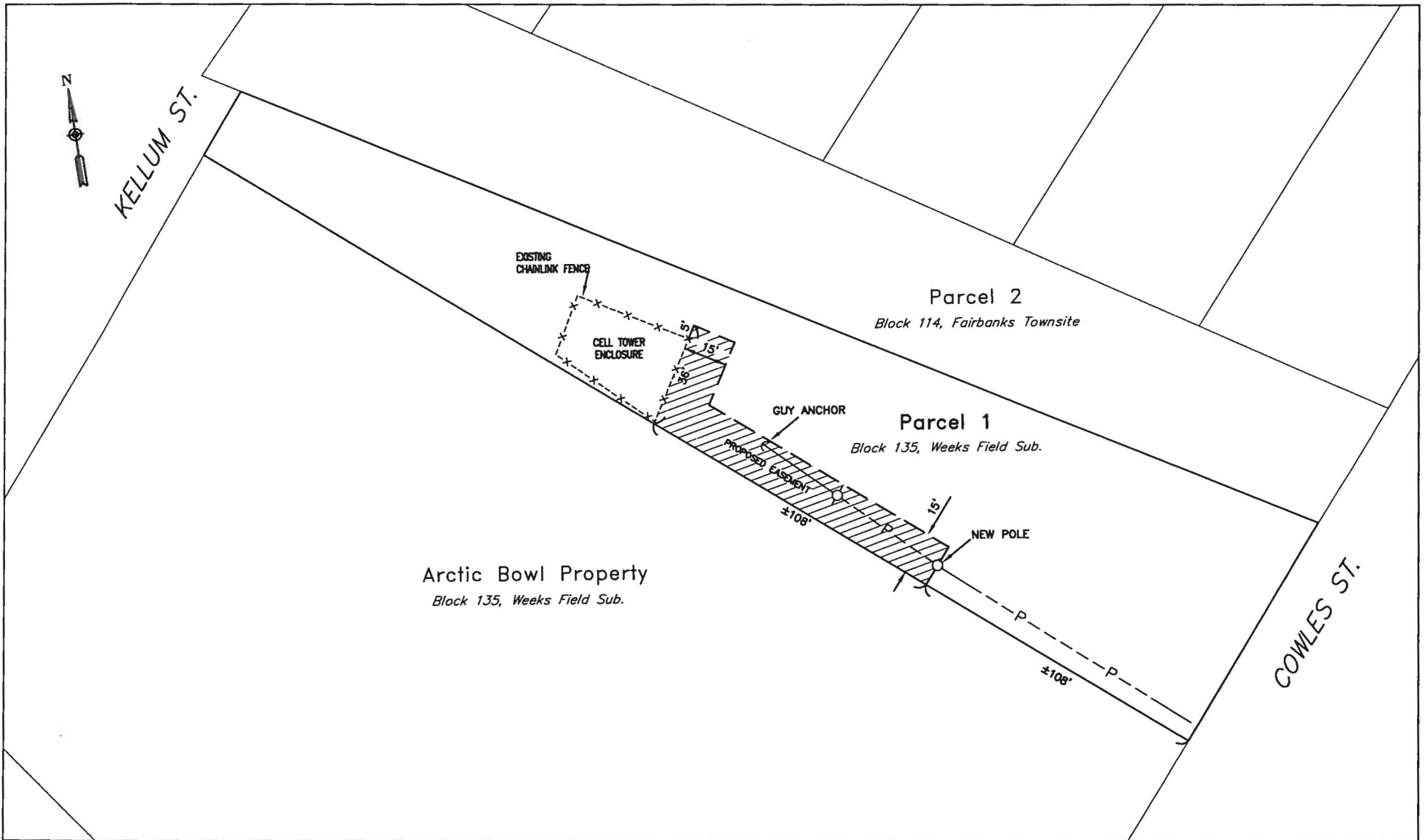
Jim Matherly
Mayor

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day _____ 2019 before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared Jim Matherly and that he acknowledged before me that he executed the same on behalf of the Grantor, with authority to do so. IN WITNESS WHEREOF, my hand and official seal.

NOTARY PUBLIC:
Commission Expires:

After recording, return to:
Paul Ewers, City Attorney
City of Fairbanks
800 Cushman Street
Fairbanks, Alaska 99701



			SCALE: 1" = 30' HORIZ.	DESIGNED: C.O.F. STAFF	APPROVED	EASEMENT EXHIBIT A	CITY OF FAIRBANKS, ALASKA Engineering Department Project FB-xx-xx/xxxxx	OF SHEETS
DATE	REVISION	BY	 Scale (Feet)	DRAWN: C.O.F. STAFF	CITY ENGINEER			
				CHECKED: C.O.F. STAFF	DATE			
				DATE: 09/19/18				