

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 17C
Amend No. _____

Date prepared: December 11, 2008

Council Meeting Date: January 20, 2009

TO: Carl Swenson, City Manager

THROUGH: Susan Daluddung, Deputy City Manager 

FROM: Andrew Granger, P.E., Engineering Director 

PREPARED BY: Kristine Luna, Real Property Administrator 

SUBJECT: Adoption of a Resolution authorizing the execution of a Utility Easement and a Temporary Access Easement Agreement to New Cingular Wireless to provide utilities and access to a wireless site located adjacent to a City owned parcel

RECOMMENDATION:

Discussion and possible action to adopt a Resolution authorizing the City Manager to execute a Utility Easement and Temporary Access Easement Agreement to New Cingular Wireless for the installation of utilities through City owned property to an adjacent wireless site located on Quintero Golf Course.

SUMMARY:

New Cingular Wireless has an existing wireless site located on Quintero Golf and Country Club adjacent to the City of Peoria's Quintero Water Treatment Plant in the Quintero Subdivision. This facility was intended to be run by a generator but operational difficulties have required Cingular to power the site with a feed from Arizona Public Service (APS). New Cingular Wireless has requested easements from the City of Peoria to provide power and communication to the wireless site. Staff has recommended that the utilities be run along the easterly perimeter of the vacant pad on the City property (see attached site location map). There is an existing dirt road running from the APS feed on the south continuing north to the wireless site. Cingular has requested the use of this road for access until such time that the City develops all or part of the vacant pad east of the treatment plant. If the City develops the site, Cingular will be required, at their expense, to construct and maintain a new access road on the easterly perimeter of the site.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # 09-18
LCON# 00709 LIC. # _____
Action Date: _____

Council Communication
New Cingular Wireless - Quintero
January 20, 2009
Page 2

Staff requests that the Mayor and Council adopt the attached Resolution authorizing the City Manager to execute the attached Utility Easement and Temporary Access Easement Agreement.

FISCAL NOTE:

New Cingular Wireless is funding all costs associated with the construction activities related to these easements and has agreed to pay \$1,600 for the perpetual utility easement.

ATTACHMENTS:

Resolution

RESOLUTION NO. 09 -18

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA, AUTHORIZING THE GRANTING OF A UTILITY EASEMENT AND TEMPORARY ACCESS EASEMENT AGREEMENT TO NEW CINGULAR WIRELESS.

WHEREAS, New Cingular Wireless, PCS, LLC a Delaware limited liability company has a wireless site on Quintero Golf course adjacent to City owned property and has requested an easement to run utilities across the city owned property to this wireless site. It will also be necessary to grant an easement to access the wireless site through the City owned property.

WHEREAS, Pursuant to Article I, Section III of the Peoria City Charter, the City Council may convey any right, title or interest in any real property in such terms as the City Council determines to be appropriate and necessary; and

WHEREAS, Pursuant to the Peoria City Charter and in accordance with the findings set forth above, the Mayor and Council of the City of Peoria consent to the granting of a Utility Easement and Temporary Access Easement Agreement to New Cingular Wireless, and authorize the City Manager to execute the document; and

WHEREAS, New Cingular Wireless has agreed to compensate the City in the amount of \$1,600 for the perpetual utility easement.

THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Peoria, Arizona authorize the granting of the attached Utility Easement and Temporary Access Easement Agreement, and authorize the City Manager to execute the easements.

Resolution No. 09-18
New Cingular Wireless - Quintero
January 20, 2009
Page 2

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria
this 20th day of January, 2009.

Bob Barrett, Mayor

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

ATTACHMENT:

1. Temporary Access Easement Agreement
2. Utility Easement
3. Site Location

When Recorded, Return To:

TEMPORARY ACCESS EASEMENT AGREEMENT

GRANTOR: City of Peoria, an Arizona municipal corporation
GRANTEE: New Cingular Wireless, PCS, LLC, a Delaware limited liability company,
DATE: _____, 2009

RECITALS

A. Grantor is the owner of the real property situated in Maricopa County, Arizona, described on Quintero Golf and Country Club Phase 1 Map of Dedication as the Water/Wastewater Treatment and Golf Maintenance Facility Parcel, as shown by plat of record in Book 592, Page 42, Maricopa County, Arizona ("Grantor Tract") hereto ("Grantor's Property").

B. Grantee has leased certain real property from Quintero Golf and Country Club, LLC adjacent to the Grantor Tract (the "Leasehold Property"), which Leasehold Property is described on Exhibit "A" hereto.

C. Grantor desires to grant an easement to Grantee over, upon and across that portion of Grantor's Property more particularly described on Exhibit "B" attached hereto (the "Easement Property") pursuant to the terms and conditions of this Easement Agreement.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee and Grantee's heirs, successors and assigns, as an easement appurtenant to Grantee's Property and every part thereof, non-exclusive easement over, upon and across the Easement Property for the purpose of ingress and egress on the adjacent portions of Grantor's Property as necessary for the operation and maintenance of the equipment on Leasehold Property.

2. Relocation of the Easement. Grantor may require the relocation of the access easement upon the sale or development of any part of the Grantor's Property. The location of the new access will encompass the area of the perpetual utility easement granted to

LCON00709

Cingular Wireless in the document dated _____ 2009 and recorded in the Maricopa Recorder's Office in document number 2009-_____, of Maricopa County, Arizona. The Grantor will advise to Grantee of the need for relocation by a 120 days written notice to Grantee. The cost of the physical relocation of the access shall be borne by the Grantee. Following the physical relocation of the access, an amendment to this Easement Agreement shall be executed by Grantor and Grantee and recorded in the records of Maricopa County, Arizona to document the new location of the access and to modify the description of the Easement Property to be the location of the new access location.

3. Maintenance. Grantee shall install and maintain the access road as an all weather road in compliance with applicable laws.

4. Running of Benefits and Burdens. All provisions of this Access Easement Agreement, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

5. Attorneys' Fees. In the event of any action to enforce the provisions of this Access Easement Agreement, the prevailing party shall be entitled to receive its costs, attorneys' fees, and litigation expenses.

6. Termination of Liability. Whenever the transfer of ownership of all or any part of the Easement Property takes place, the transferor shall not be liable for the breach, subsequent to such transfer, of any of the covenants contained herein.

7. Construction. This Access Easement Agreement shall be constructed in accordance with the laws of the State of Arizona. The rule of strict construction shall not apply to this Access Easement Agreement. This Access Easement Agreement shall be given a reasonable construction so that the intention of the parties to confer a usable right of enjoyment upon the Grantee is implemented.

8. Amendments. This Access Easement Agreement may be amended only by recording, in the office of the Recorder of Maricopa County, Arizona, an instrument in writing reciting such revocation or amendment, bearing the acknowledged signatures of both parties hereto, or their successors and assigns.

9. Notices. Notices shall be in writing and shall be given by personal or air courier service delivery to a responsible person, or by deposit in the United States Mail, certified mail, return receipt requested, postage prepaid. Notices shall be delivered or addressed to the addresses set forth below or at such other address as a party may designate in writing. The date notices shall be deemed to have been given, received and become effective shall be the date on which the notice is delivered, if notice is given by personal or air courier service delivery or three (3) days following the date of deposit in the mail, if the notice is sent through the United States Mail.

Grantor: CITY OF PEORIA
8401 West Monroe Street
Peoria, Arizona 85345
Attention: Real Property Administrator
Tel: (623) 773-7212
Fax: (623) 773-7211

Grantee: New Cingular Wireless, PCS, LLC,
12555 Cingular Way
Alpharetta, GA 30004

DATED the day and year first above written.

"Grantor"

CITY OF PEORIA,
an Arizona municipal corporation

By _____
Name: Carl R Swenson, City Manager

ATTEST:

APPROVED AS TO FORM:

Mary Jo Kief, City Clerk

Stephen M. Kemp, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008, by Carl R. Swenson, the City Manager of CITY OF PEORIA, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

Grantee* New Cingular Wireless, PCS, LLC, a Delaware limited liability company

By _____

By _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, _____ on behalf of New Cingular Wireless, PCS, LLC Delaware limited liability company

Notary Public

My Commission Expires:

EXHIBIT "A"

Description of Leasehold Property

All that portion of Founders Golf Course Parcel No. 4 per Map of Dedication for Quintero Golf and County Club Phase 1 according to the plat thereof, recorded in Book 592, Page 42 of Maricopa County, Arizona, described as follows:

Commencing at the Easterly most corner of said Parcel No. 4, basis of bearings being the northeasterly line of said parcel with a bearing of North 32 degrees 58 minutes 14 seconds west;

Thence South 80 degrees 48 minutes 05 seconds West, 470.89 feet to the point of beginning:

Thence South 09 degrees 01 minutes 54 seconds East, 12.00 feet;

Thence South 80 degrees 58 minutes 05 seconds West, 35.00 feet;

Thence North 09 degrees 01 minutes 54 seconds West, 12.00 feet;

Thence North 80 degrees 58 minutes 05 seconds East, 35.00 feet to the point of beginning

EXHIBIT "B"

Description of the Utility Easement Property

That portion of Iron Age Mining Claim No. 22. situated in section 19 of Township 6 North, Range 1 West of the Gila and Salt River Base Meridian, Maricopa County, Arizona, being the 6.00 feet on either side of the following described centerline:

Commencing at the East quarter corner of Section 13, Township 6 North, Range 2 West; thence South $13^{\circ}49'20''$ East, a distance of 4891.68 feet; thence South $56^{\circ}40'00''$ West, along the southerly line of said I.A.M.C No. 22., a distance of 543.75 feet to the point of beginning;

Thence North $32^{\circ}30'26''$ West a distance of 10.49 feet

Thence North $44^{\circ}52'40''$ East a distance of 79.55 feet

Thence North $18^{\circ}40'01''$ East a distance of 26.76 feet

Thence North $16^{\circ}14'22''$ West , a distance of 119.23 feet to the point of terminus

EXHIBIT "B"

Description of the Access Easement Property

That portion of Iron Age Mining Claim No. 22. situated in section 19 of Township 6 North, Range 1 West of the Gila and Salt River Base Meridian, Maricopa County, Arizona, being the 6.00 feet on either side of the following described centerline:

Commencing at the East quarter corner of Section 13, Township 6 North, Range 2 West; thence South $13^{\circ}49'20''$ East, a distance of 4891.68 feet; thence South $56^{\circ}40'00''$ West, along the southerly line of said I.A.M.C No. 22., a distance of 543.75 to the point of beginning;

Thence North $32^{\circ}30'26''$ West, a distance of 10.49 feet;

Thence North $44^{\circ}52'40''$ East, a distance of 79.55 feet;

Thence North $18^{\circ}40'01''$ East, a distance of 26.76 feet;

Thence North $16^{\circ}14'22''$ West, a distance of 119.23 feet to the point of terminus.

When Recorded Mail to:

New Cingular Wireless, PCS, LLC,
12555 Cingular Way
Alpharetta, GA 30004

Site Name:PHNXAZX010, Quintero Golf

UTILITY EASEMENT

GRANTOR: City of Peoria, an Arizona municipal corporation
GRANTEE: New Cingular Wireless, PCS, LLC, a Delaware limited liability company,
DATE: _____, 2009

WHEREAS, Grantor is the owner of the real property situated in Maricopa County, Arizona, described on Quintero Golf and Country Club Phase 1 Map of Dedication as the Water/Wastewater Treatment and Golf Maintenance Facility Parcel, as shown by plat of record in Book 592, Page 42, Maricopa County, Arizona ("Grantor Tract") hereto ("Grantor's Property").

WHEREAS, Grantee has leased certain real property from Quintero Golf and Country Club, LLC adjacent to the Grantor Tract (the "Leasehold Property"), which Leasehold Property is described on Exhibit "A" hereto; and

WHEREAS, the convenient route to the Leasehold Property for underground power and telephone utility purposes is across a portion of the Grantor Tract described on Exhibit "B" (Easement Tract); and

WHEREAS, Grantor has agreed to grant Grantee an underground utility easement in, upon, over, under, across and through the Grantor Tract in order to allow Grantee to bring utilities to the Leasehold Property;

NOW, THEREFORE, for and in consideration of sixteen hundred dollars (\$1,600) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee covenant, contract and agree as follows:

Grantor hereby conveys and grants to Grantee, its successors, agents, and assigns, and Grantee (on its behalf and on behalf of its successors, agents, and assigns) accepts from Grantor, a perpetual non-exclusive easement in, upon, over, under, across and through that certain portion of the Grantor Tract more particularly described on Exhibit B (the "Easement Tract") to construct, install, reconstruct, replace, remove, repair, operate and maintain underground utilities serving the Leasehold Property.

1. The consents and rights granted herein are granted to Grantee, its successors, agents, and assigns, and shall exist for only so long as the Leasehold Property is leased or owned by Grantee, its successors, agents, or assigns and used to maintain and operate a tower, wireless, cellular, radio or similar facility, and this Agreement shall terminate automatically upon the removal of the transmission tower and other transmission and wireless facilities from the Leasehold Property.
2. Grantee shall have the right to assign, transfer, convey, or otherwise transfer all of its interest, claims or rights in the Easement Tract in whole or part without consent from Grantor.
3. Nothing contained in this Easement Agreement will be deemed to be a dedication of any portion of the Easement Tract to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement will be strictly limited to and for the purpose set forth herein.
4. Each and all of the covenants and provisions contained herein are (a) made for the benefit of the Leasehold Property; (b) shall be covenants running with the land; (c) will bind every person having any fee, leasehold or other interest in any portion of the Leasehold Property or Grantor Tract to the extent that such portion is affected or bound by any term, covenant or provision set forth herein; and (d) will inure to the benefit of the Parties and their respective agents, successors, and assigns as to the Leasehold Property and the Grantor Tract.

IN WITNESS WHEREOF, the parties have caused this instrument to be signed and witnessed the day and date first above written.

GRANTOR:

CITY OF PEORIA,
an Arizona municipal corporation

By _____
Name: Carl R. Swenson, City Manager

ATTEST:

APPROVED AS TO FORM:

Mary Jo Kief, City Clerk

Stephen M. Kemp, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this __ day of _____, 2008, by Carl R. Swenson, the City Manager of CITY OF PEORIA, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires: _____

EXHIBIT "A" - Leasehold Property

All that portion of Founders Golf Course Parcel No. 4 per Map of Dedication for Quintero Golf and County Club Phase 1 according to the plat thereof, recorded in Book 592, Page 42 of Maricopa County, Arizona, described as follows:

Commencing at the Easterly most corner of said Parcel No. 4, basis of bearings being the northeasterly line of said parcel with a bearing of North 32° 58' 14 " west; Thence South 80°48'05" West, 470.89 feet to the point of beginning:

Thence South 09°01'54" East, 12.00 feet;

Thence South 80°58'06" West, 35.00 feet;

Thence North 09°01'54" West, 12.00 feet;

Thence North 80°58'06" East, 35.00 feet to the point of beginning

EXHIBIT B -EASEMENT TRACT

That portion of Iron Age Mining Claim No. 22. situated in section 19 of Township 6 North, Range 1 West of the Gila and Salt River Base Meridian, Maricopa County, Arizona, being the 3.00 feet on either side of the following described centerline:

Commencing at the East quarter corner of Section 13, Township 6 North, Range 2 West; thence South $13^{\circ}49'20''$ East, a distance of 4891.68 feet; thence South $56^{\circ}40'00''$ West, along the southerly line of said I.A.M.C No. 22., a distance of 531.28 feet; thence departing said southerly line North $30^{\circ}55'08''$ West, a distance of 28.08 feet; thence North $50^{\circ}54'50''$ East a distance of 28.40 feet to the point of beginning;

Thence South $33^{\circ}20'00''$ East, a distance of 27.91 feet;

Thence North $56^{\circ}40'00''$ East, a distance of 167.49 feet;

Thence North $23^{\circ}13'11''$ West, a distance of 77.54 feet;

Thence North $40^{\circ}11'28''$ West, a distance of 13.13 feet;

Thence North $55^{\circ}33'30''$ West, a distance of 12.99 feet;

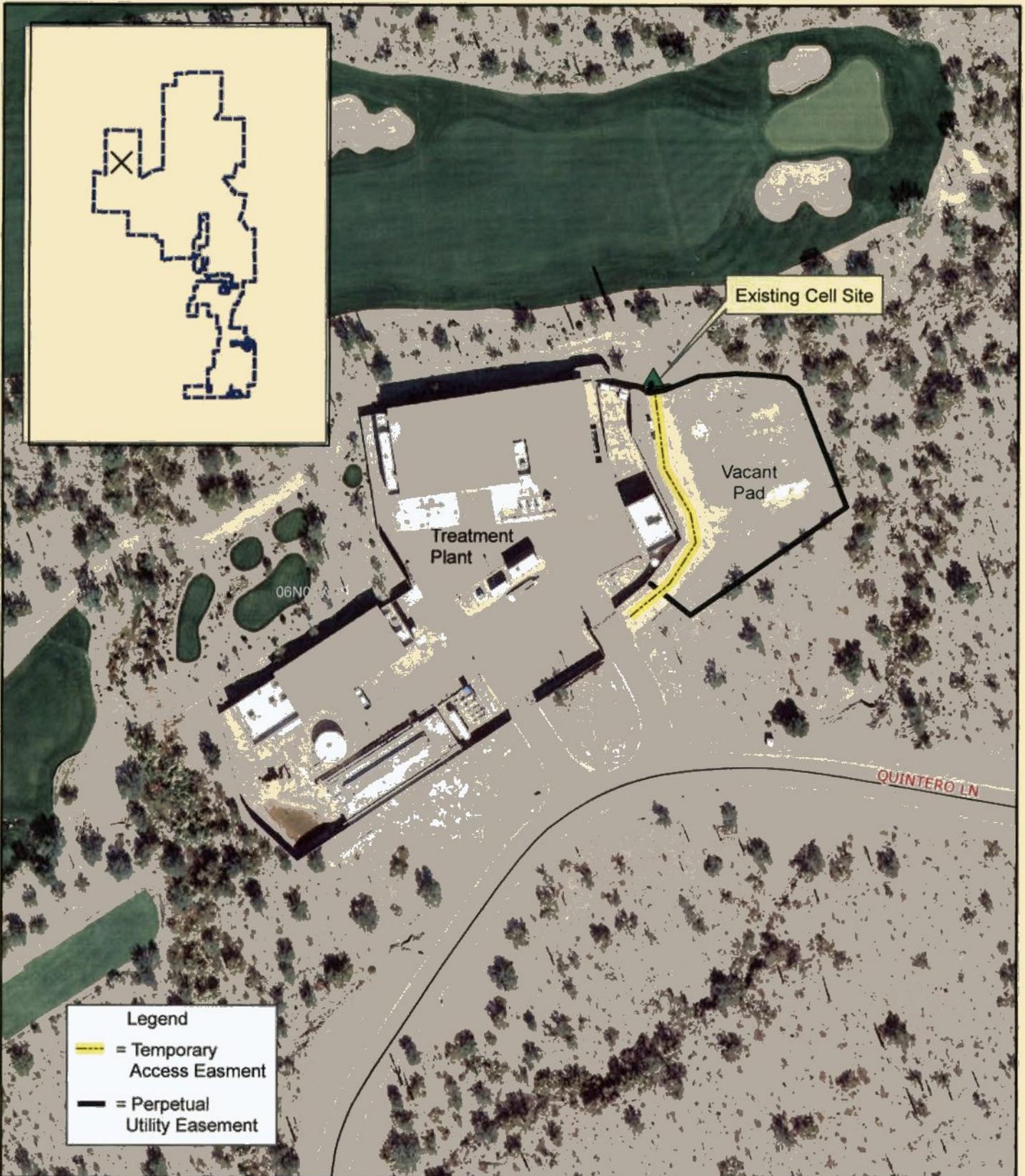
Thence North $66^{\circ}36'10''$ West, a distance 12.88 feet

Thence South $81^{\circ}23'58''$ West, a distance of 58.70 feet;

Thence South $73^{\circ}47'43''$ West, a distance of 15.16;

Thence North $10^{\circ}14'20''$ West a distance of 6.03 feet to the point of terminus

Site Location



Legend
— = Temporary Access Easement
— = Perpetual Utility Easement



**New Cingular Wireless - Easements
Quintero Treatment Plant
APN# 503-88-037 6N-1W-19**

Note: This map is based on imprecise source data, subject to change and for GENERAL REFERENCE ONLY