



RESOLUTION NO. U-11238

1 A RESOLUTION approving use of a Telecommunication Site License
2 Agreement form replacing the previously approved Master License
3 Agreement form for telecommunication service providers.

4 WHEREAS, on September 10, 1997, pursuant to Resolution No. U-9288,
5 the Public Utility Board of the City of Tacoma ("Board") authorized the proper
6 officers of the City of Tacoma to execute, use, and implement, a Master License
7 Agreement ("MLA") for telecommunication service providers who desired to use
8 Power and Water Division properties for radio antenna sites, and

9 WHEREAS, the MLA set forth the general terms and conditions, including
10 fees and costs, and provided for execution of a site specific Site License
11 Acknowledgement ("SLA"), and

12 WHEREAS, on February 27, 2019, pursuant to Resolution No. U-11061,
13 the Board approved an extension of the MLAs to December 31, 2021, and
14 authorized the proper officers of the City of Tacoma to execute amendments to
15 the executed MLAs, said amendments operating retroactively as appropriate,
16 and
17

18 WHEREAS, Tacoma Water, Tacoma Power, and the Legal Department
19 have: (1) completed a detailed and comprehensive review of the MLA program,
20 the MLAs, and associated SLAs, (2) updated the program to align with current
21 industry practices and norms, (3) reviewed and updated, with the aid of a
22 contractor, the fee schedule setting forth the fees and charges for use of City of
23 Tacoma property and facilities, and (4) drafted a Telecommunications Site
24 License Agreement which provides terms and conditions under which
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telecommunications services providers may access and use Power and Water division properties and facilities, and

WHEREAS, it is beneficial to the City of Tacoma and in the best public interest to: (1) supersede and replace Resolution U-9288, (2) authorize the Power and Water Divisions to use and implement the updated Telecommunications Site License Agreement, on file with the Clerk, (3) approve the schedule of rates and charges specified in said agreement and (4) delegate to the Director the authority to modify and update said agreement, in a fair and nondiscriminatory manner, as approved by the City Attorney; Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the updated Telecommunications Site License Agreement in the form on file with the Clerk is approved, the Director, or the Director's designee, is authorized to execute and to modify the said agreement form, exclusive of the schedule of rates and charges, upon approval of the City Attorney, and the schedule of rates and charges set forth in the Agreement is approved.

Approved as to form:	_____
	Chair
_____ /s/ Chief Deputy City Attorney	_____ Secretary
_____ Clerk	Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities

COPY: Charleen Jacobs, Director and Board Offices
 Chris Mattson, Generation Manager
 Terry Ryan, Plant Engineering Manager
 Jenni Allen, Management Analyst II

FROM: Chris Robinson, Power Superintendent

MEETING DATE: January 27, 2021

DATE: January 14, 2021

STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board’s Strategic Directives is supported by this action.

- SD1 – Equity & Inclusion
- SD2 – Financial Sustainability
- SD3 – Rates
- SD4 – Stakeholder Engagement
- SD5 – Environmental Leadership
- SD6 – Innovation
- SD7 – Reliability & Resiliency
- SD8 – Telecom
- SD9 – Economic Development
- SD10 – Government Relations
- SD11 – Decarbonization/Electric Vehicles
- SD12 – Employee Relations
- SD13 – Customer Service
- SD14 – Resource Planning

SUMMARY: Tacoma Power is requesting the Public Utility Board to authorize the use and implementation of an updated Telecommunications Site License Agreement template, to approve the schedule of rates and charges specified in said agreement template, and delegate to the Director the authority to execute Telecommunications Site License Agreements on the form on file with the Clerk, as well as to modify and update said agreements, in a fair and nondiscriminatory manner, as approved by the City Attorney.

BACKGROUND: In 1997, the Public Utility Board authorized a Telecom Licensing Program to manage the requests of telecommunications service providers seeking to use Tacoma Power and Tacoma Water properties for unmanned radio antenna sites under Resolution U-9288. As part of this program, a Master License Agreement (MLA) was developed to be used as a template for agreements between TPU and the service providers.

Each Master License Agreement was approved initially for a 5-year term and allowed up to 3 additional 5-year terms, for a total potential term of 20 years. On February 27, 2019 the Board approved an extension of the MLAs to December 31, 2021 under Resolution U-11061. This extension was to allow sufficient time to bring the program into alignment with the current practices for this industry. Tacoma Power hired a consulting company to help develop the appropriate instruments, fee structure, and other program requirements going forward.

Tacoma Water, Tacoma Power, and the Legal Department have completed a detailed and comprehensive review of the MLA program, the MLAs, and associated Site License Acknowledgements. The program has been aligned with current industry practices and norms. The fee schedule and charges for use of City of Tacoma property and facilities has been reviewed and updated, with the aid of a contractor, and a new Telecommunications Site License Agreement template has been drafted which provides terms and conditions under which telecommunications services providers may access and use Power and Water division properties and facilities.



Board Action Memorandum

Working with the telecommunication service providers to collocate on TPU properties allows for better regional communication by widening the cellular phone coverage and capacity in Tacoma and the surrounding areas.

Provide all relevant history to this action to include all previous contracts, contract amendments. Include dates and aggregate totals and any previously Board action associated with this request. Include any C&A Board action (applicable if contract is over \$500,000 or is a request for additional funding of a previously-approved contract beyond the administratively authorized increase).

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

The Telcom Licensing Program is structured so as to not create costs for the Utility. The fees collected from telecom providers covers the cost of administration.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No

ATTACHMENTS: Telecommunication Site License Agreement
Resolution U-9288 Master License Agreement Authorization
Resolution U-11061 Master License Agreement Extension

CONTACT:

Primary Contact: Jenni Allen, Tacoma Power Management Analyst II, (253) 905-4285

Supervisor's Name: Chris Mattson, Generation Manager, (253) 502-8098 or
Terry Ryan, Plant Engineering Manager, (253) 502-8793

Presenter (if different from primary contact): N/A

Additional staff requiring a Zoom presentation link: Chris Mattson, Generation Manager
Terry Ryan, Plant Engineering Manager

TELECOMMUNICATION SITE LICENSE AGREEMENT

This Telecommunication Site License Agreement is made this ____ day of _____, 20____, ("Effective Date") by and between the City of Tacoma, Department of Public Utilities, a municipal corporation, ("Licensor") and _____, a _____ Corporation ("Licensee"). Licensor and Licensee may be referred to where appropriate individually as a "Party" or collectively as "Parties."

BACKGROUND

- A. Licensor owns or has legal rights to structures that include towers, communication facilities, utility structures, and associated improvements. Licensor also owns or has legal rights to the real property associated with these structures.
- B. Licensee wishes to obtain a non-exclusive license to use specified portions of Licensor's structures for locating unmanned radio and/or wireless communications equipment and to use specified portions of Licensor's real property to place communications support equipment.
- C. The Licensor desires to facilitate the availability of telecommunications services by providing access to its structures and real property for the purposes of attaching specified equipment in furtherance of telecommunication services.

NOW THEREFORE, in consideration of the mutual covenants contained in this License Agreement and other good and valuable consideration, the Parties agree as follows:

1. DEFINITIONS

A. **"Acquiring Affiliate"** means any person or entity that controls, is controlled by, or under common control with Licensee.

B. **"Agreement"** means this Telecommunication Site License Agreement.

C. **"Annual Adjustment"** means an adjustment of the Annual Use Fee to account for inflation or changes in market conditions.

D. **"Annual Use Fee"** means the annual fee for the use of the Site as specified in the fee schedule set forth in Section 5.A. "Annual Use Fee."

E. **"Applicable Law"** means all present and future rules and regulations of any local, State, or Federal authority having jurisdiction with respect hereto, including, without limitation, any and all federal, state, and local regulations, rules and requirements applicable to telecommunications service and/or wireless telecommunications attachments specifically including, but not necessarily limited to: The Communications Act of 1934, as amended by the Telecommunications Act of 1996; the Rules and Regulations

promulgated by the Federal Communications Commission under said Act(s) –when applicable and in accordance with Washington State law; the National Electric Safety Code ("NESC"); RCW; and WAC.

F. "Applicable Standard" means:

(1) those laws, ordinances, rules, regulations, orders, licenses, permits, franchises and other requirements, now or hereafter in effect, of any Governmental Authority;

(2) all applicable engineering, industry, and safety standards and codes governing the installation, maintenance, and operation of telecommunications facilities, water utility facilities, electric utility facilities, and the performance of work in and around telecommunications facilities and electric and water utility facilities. This includes, without limitation, the latest versions of the National Electric Safety Code ("NESC") and National Electric Code ("NEC") as adopted by Washington State, and the regulations of the Occupational Safety and Health Administration ("OSHA") and the Washington State Division of Occupational Safety and Health ("DOSH") within the Department of Labor and Industries ("L&I");

(3) Licensor's construction standards, specifications, rules, and regulations which apply to Licensee's Work.

G. "Capacity" means the ability of a Site and/or Property to accommodate additional Equipment based on Applicable Standards including space and loading considerations.

H. "Effective Date" is defined in the preamble above.

I. "Emergency" means a sudden and unexpected occurrence which presents an imminent threat of harm to persons or property and which requires immediate action to prevent such harm.

J. "Equipment" means Licensee's unmanned radio and/or wireless communications equipment or facilities and direct support equipment necessary for transmission and receipt of radio/wireless communications. "Equipment" may include Licensee's antennas, microwave dishes, cables, equipment cabinets, and shelters.

K. "Event of Default" has the same meaning as defined in Section 21 "Default and Remedies."

L. "Force Majeure" means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated and which is not within the reasonable control of, or the result of the negligence of, the Party claiming a Force Majeure event,

and which the said Party is unable to overcome or avoid or cause to be avoided, by the exercise of due diligence.

M. "Governmental Authority" means any national, federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any applicable laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

N. "Hazardous Substances" means any substance or material defined or designated as hazardous, toxic, toxic waste, dangerous, harmful, hazardous or toxic material, or hazardous or toxic or radioactive substance, or other similar term pursuant to any federal, state, or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and "Hazardous Substances" shall be interpreted to include, but not limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

O. "Hold-Over Period" has the meaning as defined in Section 22 "Surrender of Site; Holding Over."

P. "Initial Term" has the same meaning as defined in Section 4 "Term."

Q. "Instrument" means any underlying easement, license, franchise, permit, or other instrument of authorization or conveyance.

R. "Permitted Use" means that use of the Site authorized by this Agreement as specified in Section 3 "Permitted Use" and Exhibit B "Permitted Use and Equipment".

S. "Property" means the Licensor's equipment, towers, structures, improvements, and facilities, and Licensor's associated real property, that Licensor owns or has legal rights to that Licensor may make available for the placement of Licensee's Equipment

T. "Proposal" means the Proposal as described in Section 16 "Changes to Site."

U. "R56" means the Motorola Solutions *Standards and Guidelines for Communications Sites* document. The revision C of said Standards is dated April 2017.

V. "Renewal Term" means a five (5) year term after the Initial Term.

W. "Site" means the specified portion of Licensor's Property licensed to Licensee pursuant to the terms and conditions of this Agreement.

X. "Termination Date" has the same meaning as defined in Section 22 "Surrender of Site; Holding Over."

Y. **“Work”** means the installation, operation, maintenance, repair, relocation, upgrading, and/or removal of Equipment and any other work performed or completed in connection with this Agreement.

2. LICENSE

A. License. Subject to the terms and conditions contained in this Agreement, Licensor grants a non-exclusive, revocable license to Licensee to use that portion of the Property described in the attached Exhibit A, “Site” for the Permitted Use described in Exhibit B, “Permitted Use and Equipment.”

B. No Other Rights Granted. This Agreement shall constitute a license with respect to the Site and does not convey any right, title, or interest in property, Licensor’s Property, or in the Site. The permission granted to use the Site is a revocable privilege to do the acts specified in this Agreement or applicable Amendment. Said permission is non-assignable except as provided for in Section 33 “Assignment.” Further, no use of the Site, regardless of duration, or payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement, lease, or other ownership or property right of any nature in any portion of the Property or Site.

3. PERMITTED USE

A. Permitted Use. The Site may be used by Licensee only for the installation, operation, upgrading, repair, maintenance, and removal of Equipment and related telecommunications activities as described in Exhibit B “Permitted Use and Equipment” attached (“Permitted Use”). Permitted Uses are subject to the terms and conditions of this Agreement and limited to those uses and Equipment specified in this Agreement. No other use shall be allowed without Licensor’s express written consent.

B. Minimum Standards. Licensee shall comply with the minimum standards and specifications described under “Minimum Standards and Specifications” attached as Exhibit D and incorporated into this Agreement.

C. Interference Policy. Licensee shall comply with Licensor’s Interference Policy Statement attached as Exhibit E and incorporated into this Agreement.

D. Restrictions on Permitted Use. Licensee shall not use or permit any use of the Site that will in any way:

- (1) Conflict with any Applicable Law, statute, regulation, ordinance, rule, order or other requirement, now or hereafter in effect, of any governmental authority;

(2) Cause or constitute any nuisance, noxious odors, unsafe condition, or Environmental Hazards in or about the Site; or

(3) Interfere with the rights, operations, or disturb the quiet enjoyment of Licensor, other users of the Site, or any other person lawfully on the Site.

E. License to Use Site Is Secondary. Licensee acknowledges that this License and the Permitted Use is secondary to Licensor's system operations, maintenance, and related activities which are the primary uses of the Site.

F. Nonexclusive. All privileges of use granted under this Agreement are non-exclusive, and nothing in this Agreement shall be deemed to prohibit or limit the rights of the Licensor to grant leases, additional licenses, or other rights of use and occupancy to any third party, provided the use by such third party does not unreasonably interfere with the use and occupancy of the Site by the Licensee.

4. TERM

A. Initial Term. This Agreement will have an initial term of five (5) years commencing on the Effective Date of this Agreement ("Initial Term").

B. Renewal Term. The term of this Agreement shall be automatically renewed for two (2) additional five (5) year Renewal Terms unless either Party provides written notice to the other Party of its intention not to renew ninety (90) days prior to the expiration of the Initial Term or any Renewal Term or unless otherwise terminated as provided in this Agreement.

5. FEES

A. Annual Use Fee. Licensee shall pay the Annual Use Fee specified in Exhibit C "Fee Schedule." The Annual Use Fee will be calculated as follows:

Annual Fees		
Colocation		
Antennas		
Non-dish:		
Up to 10' in vertical length		\$3,000
Over 10' in vertical length		\$3,600
Panel		\$3,600
Dish:		
2' diameter		\$500
3' diameter		\$1,125
4' diameter		\$2,000
6' diameter		\$4,500
8' diameter		\$8,000

Antenna Placement		
Discount for placement in lower 2/3s of tower		33%
Discount for Antennas on Rural Sites		25%
Rack Space		
Per rack (WxDxH: 2'x2'x7')		\$7,200
Ground Facilities Annual Fee		
Macrosite		\$40,000
Minisite		\$37,000
Microsite		\$29,600
Macrosite Rural Discount		25%
Minisite Rural Discount		25%
Microsite Rural Discount		25%
Public Entity (Government)Discount		50%

B. Ground Facilities Annual Fee Pricing Guidelines.

(1) Property Category.

Licensor's Property is categorized as follows:

- a. **Macrosite.** "Macrosite" shall mean Property with 9 or more antennas and/or fenced area with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined area exceeds 500 square feet, not to exceed 16 antennas or 2,500 square feet.
- b. **Minisite.** "Minisite" shall mean Property with 4 to 8 antennas and/or fenced area with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined area is in excess of 300 square feet but less than 500 square feet.
- c. **Microsite.** "Microsite" shall mean Property with 1 to 3 antennas and/or fenced area with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined area is less than 300 square feet.

(2) Rate Adjustments. Licensor may make adjustments in the rate charged, either an increase or decrease, whenever the equipment area, the ground space square footage, or the number of antennas change. For example, and by way of illustration only, if Licensee removes an antenna, decreasing the total number of antennae from four to three, the site will be re-designated from a Minisite to a Microsite.

C. Hold Over. In the event Licensor permits Licensee to remain at the Site past expiration or termination of the Agreement as provided for in Section 22 "Surrender of Site; Holding Over," Licensee shall pay the monthly license fee in accordance with that Section.

D. Administrative Fee. Licensee shall pay the administrative fees specified Section 6 "Additional Fees and Taxes" in connection with processing any proposed changes to Equipment, re-configuration of Licensee's Equipment at the Site, processing amendments to this Agreement, or any other administrative request that occurs during the term of this Agreement.

E. Cost Reimbursement. Licensee shall reimburse Licensor for any and all costs and expenses incurred by Licensor in connection with this Agreement. These costs and expenses may include, but are not limited to, applicable engineering, inspection, construction, maintenance, supervision, and/or administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service, safety escorts, the impact of City utility tax and any other expenses incurred during the term of this Agreement.

F. Changes to Fee Schedule.

(1) The Licensor specifically reserves the right to modify its fee schedules and categories so as to account for changes in Licensor's accounting principles and policies, legal and/or regulatory changes, operation of Licensor's system, significant change in market conditions or any other reasons not delineated herein. Licensor will provide a minimum of ninety days' notice of changes to the Fee Schedule. The effective date of changes to the Fees Schedule will be identified in the Amendment to the Agreement modifying Section 5 "Fees" and Section 6 "Additional Fees and Taxes."

(2) Modification of Annual Use Fees (not including Annual Adjustments) will be incorporated into the Agreement by executing an amendment to this Agreement. The effective date of changes to the Fees Schedule will be included in the modified Exhibit C, "Fee Schedule."

G. Annual Adjustment of Annual Use Fees. Commencing on January 1, 2023, and on each anniversary of that date (the "Adjustment Date"), the Annual Use Fee shall increase at a rate of 3% per annum.

6. ADDITIONAL FEES AND TAXES

A. Responsibility to Pay Any Additional Fees including Taxes. Licensee is responsible for paying any and all additional fees and taxes, including but not limited to the Leasehold Excise Tax pursuant to Chapter 82.29A RCW (if applicable). Licensee shall have the right to appeal or contest at its sole expense (except as otherwise required by

law) all personal property fees and taxes applicable to or incurred in connection with the Work, or the Equipment.

B. Leasehold Excise Tax. Leasehold Excise Tax is calculated by the State of Washington, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in use fee/permit fee/license fee for the Site over the term hereof, or for increases due to an increase in the statutory rate during the term of this Agreement. If Licensee provides Licensor with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be required to obtain documented renewal of such exemption and provide such to Licensor in order to claim continued exemption under this Agreement.

C. Additional Fee Categories

Fee Category	Associated Fee
Application Fee (includes administrative costs, engineering review, one site walk / on-site meeting, simple design review, one post construction site inspection, one as-built design review)	\$1500
Additional Site Walk/on-site meeting	\$500
Design Review - Complex	Pass Through Consulting Review Costs plus \$200 Administrative Fee
Engineering Reports (i.e. Structural, Geotechnical, Non-Ionizing Emissions Report), if applicable	Pass Through Consulting Review Costs plus \$200 Administrative Fee
Additional Post Construction Site Inspection	\$300
Site Escort – 48 hour notice, regular business hours 7AM to 7PM	\$150 per hour, 1 hour minimum
Site Escort – short notice and/or after hours	\$225 per hour, 3 hour minimum
Additional As-Built Drawings Review	\$300
Replacement of Lost Key	\$1,000/ per occurrence

7. BILLING

A. Billing Procedure.

Billing shall be as follows:

Site License Agreement
TPU / [insert name]

- (1) First Year: The first year Annual Use Fee for the site shall be prorated to cover the period beginning on the earlier of: Thirty (30) days after the commencement date of the agreement or date the Licensee commences installations of the equipment on the site and ending on December 31st of that same year.
- (2) Subsequent Years: In subsequent years, the Annual Use Fee for the site will cover a period of January 1 – December 31.
- (3) Annual Use Fees will be invoiced by the Licensor with an effective date of January 1st and is due on or before February 1st of each year. Licensor will invoice Licensee for all other fees, costs, and expenses for which Licensee is obligated to pay as they arise.
- (4) Final year: Licensor shall invoice or credit Licensee on a prorated basis as appropriate.

B. Payment.

The Annual Use Fee shall be payable in advance on January 1st of each year to Licensor. Licensee agrees that payment of the Annual Use Fee or other sums due as specified in Exhibit C shall be due and paid without the necessity of a demand or invoice from the Licensor.

Licensee shall pay all invoices within thirty (30) calendar days of receipt. All payments shall be made in immediately available funds payable to Licensor (City of Tacoma, Department of Public Utilities dba Tacoma Public Utilities), or by wire transfer to a bank named by Licensor. If Licensor does not receive payment for any fees or other amount owed within thirty (30) calendar days after it becomes due, the Licensee shall pay interest to Licensor at the rate of one percent (1%) per month, or the maximum interest allowed by law, on the amount due.

C. Preservation of Payment Obligations. All payment obligations incurred under this Agreement shall be preserved until satisfied.

8. EQUIPMENT AND WORK

A. Licensee Cost and Expense. Work will be undertaken at Licensee's sole cost and expense and, unless otherwise agreed to in writing by the Parties, Licensee shall furnish all personnel, supervision, labor, transportation, tools, Equipment and materials for the Work.

B. Licensor Employees. Licensee shall not independently hire any employee of Licensor to perform any of the Work (e.g., other than in the course of his or her employment with Licensor with respect to Work that Licensor agrees to perform for Licensee).

C. Equipment. Equipment shall be of high quality, safe, and used only in conformance with manufacturers' and installers' guidelines.

D. Performance of Work. Licensee shall perform Work in a workmanlike and skillful manner. Licensee shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified. Licensee shall, if so requested by Licensor, remove from the Site any personnel whom Licensor finds to be incompetent, careless or unsafe.

E. Work Correction or Replacement / Refusal to Perform Work. Licensee shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement. If Licensee fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, Licensor may, after ten (10) days' notice to Licensee or sooner, upon Licensor's determination of an Emergency, perform such Work and make such corrections and replacements in coordination with Licensee at Licensee's sole risk and expense and Licensee shall reimburse Licensor for the entire expense thereby incurred.

F. Adverse Impact. Work or Equipment must not adversely affect the structural integrity of any structure or improvement on the Site, the maintenance of the Site or maintenance of any structure or improvement of the Site. Licensee will use best efforts to minimize the aesthetic impact of its Equipment.

G. Labor. Licensee hereby acknowledges that Licensor employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between Licensor and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Agreement, Licensee will cooperate with Licensor as is reasonable.

H. Plan for Minimizing Visual Impact of Equipment at Site. Licensee agrees to make best efforts to minimize the visual impact of any Equipment. Licensee shall paint proposed antennas and mounts to match the existing structures and keep the tip of the proposed antennas at the same elevation as the existing antenna.

I. Project Plan.

(1) Project Plan. Licensee shall submit a project plan to Licensor for review prior to commencing any work. The project plan shall include, at a minimum, the following information:

(a) Name, address and phone number of:

- (1) Licensee's project manager,
- (2) The design team including architect and engineer(s),
- (3) All contractors (general and all subcontractors).

(b) The schedule of work (include contractor and type of work). If the schedule changes, Licensor shall be provided with a current, updated schedule of work.

(c) A plan showing the limits of excavation, if any, including an estimate of spoil quantity and method of incorporation into the site.

(d) Work Hazard Analysis Report shall be provided which includes a fall protection plan.

(2) Painting. If painting of any of Licensor's equipment or facilities is needed, the painting contractor shall submit the proposed procedure for touch-up painting. The type and color of paint to be used shall be included in this procedure. The contractor shall take all necessary precautions to eliminate overspray. Should overspray occur, the contractor and/or Licensee shall fully restore impacted properties.

(3) Project Plan Modifications. Licensor reserves the right to require reasonable modifications or additions to the project plan at its discretion as new work conditions are encountered.

J. Attachment/Fasteners. Licensee acknowledges that it is aware that the use of bolts, mechanical fasteners, welding or any mechanical penetration for attachment of any equipment to Licensor's structure is prohibited at this site. In addition, Licensee warrants that any equipment layout and detail, antenna attachment detail, zoning detail, and/or any other plan will contain the aforementioned restriction. Epoxies or other chemical adhesion methods shall be pre-approved by the Licensor.

K. Construction Drawings. All applicable structural construction drawings shall be sealed by the structural engineer. All construction shall be done on the basis of these drawings. It shall be the Licensee's project manager's responsibility to ensure all contractors have sealed drawings.

L. Inspection. The certifying engineer shall inspect the installation as necessary during construction and shall perform a post construction inspection to verify it was constructed as designed. A letter indicating such shall be submitted to Licensor. Any such inspection or verification shall not constitute nor be understood as (i) a representation or warranty, express or implied, of the adequacy of the installation, the Equipment, Work, or Permitted Use, or (ii) a representation, warranty, or certification that the installation, work, or materials are in compliance with any requirements imposed by a Governmental Authority.

M. Additional Conditions. Licensee shall comply with any additional conditions identified through any of the applicable following review processes:

- a. Licensor SLA Project Plan Review
- b. Building and Land Use Services Building Permit Review
- c. Applicable Land Use Administration Report Findings

N. Requirements for Additional Details and Drawings. Licensee warrants that any structural construction drawings, Antenna Attachment Detail, Zoning Detail, and/or any other plan will contain the aforementioned restrictions, as appropriate. Approved information will be incorporated and become a part of this Agreement.

9. COMPLIANCE AND APPLICABLE LAW

A. Compliance. Licensee shall, at its expense, comply with all of the following in connection with (1) the use of the Site, (2) any and all Equipment, (3) the performance of Work, and/or (4) the operation or maintenance of Equipment associated therewith:

- (1) All Applicable Law;
- (2) All Applicable Standards;
- (3) All permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment; and
- (4) Licensor's practices, specifications, policies, rules, and regulations.

If (i) Licensee's Equipment violates or is not in compliance with Applicable Law, Applicable Standards, permits, licenses, rights-of-way, easements, and/or other applicable requirements, now or hereafter in effect, or if (ii) any governmental authority requires any change to Licensee's Equipment, then Licensee shall complete said changes and bring its Equipment into compliance.

All laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference.

B. Compliance Obligations of Employees and Contractors. Licensee shall ensure that its employees, agents, contractors, sub-contractors, and/or Sub-Licensees of any tier comply with Applicable Law; Applicable Standards; the permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and to operate the Equipment; and Licensor's practices, specifications, policies, rules, and regulations.

C. Compliance Evidence. Licensee shall furnish to Licensor such documents that it may reasonably require to effect or evidence compliance with this Article 9. Compliance with

this Section 9, "Compliance" shall be the sole responsibility of Licensee and a continuing condition of the use of the Site by Licensee.

10. INSPECTION

A. Visual Inspection. As this Agreement conveys no possessory interests whatsoever in the Property or the Site, the Licensor may enter and access the Property and the Site at any time and may visually inspect the Licensee's Work and Equipment at any time to ensure compliance with this Agreement, Licensor's policies and/or standards presently in effect or as may be amended. No inspection, delay or failure to inspect, or failure to discover any defect or non-compliance by Licensor shall relieve Licensee of any of its obligations under this Agreement.

B. Testing. Upon 24-hour prior notice to Licensee, Licensor may test the Licensee's Work and Equipment or conduct studies as provided for in Exhibit D and E. Licensee may have a representative present at any testing of the Work and/or the Equipment.

C. Licensor No Duty or Warranty. This section shall not be construed as a duty by Licensor to inspect. Licensor's inspection shall not constitute a representation or warranty, express or implied, as to the adequacy of the construction, design, reconstruction, and/or maintenance of the Equipment, Work, or the Permitted Use.

11. SITE UTILITIES

A. Electric and Telephone Service to Site. Licensee shall have the right, at its sole cost and expense, to obtain electrical and telephone service from any utility company that provides such service to the Site. The Licensee shall pay for all of Licensee's utility charges and costs when due. Licensee may arrange for the installation of a separate meter and main breaker. Licensor may at its option provide utility power or communications to the Site at the request of the Licensee.

B. Utility Location. The exact location of utility routes shall be part of the drawings included with Exhibit B "Permitted Use and Equipment."

C. Licensor Acknowledgements Regarding Utilities. Licensor understands and acknowledges that to the best of its knowledge, the Site includes such non-exclusive easement rights as necessary to connect utility wires, cables, fibers and conduits to the Equipment.

12. SITE ACCESS

A. Site Access Provisions. The following provisions shall govern access to the Site by Licensee:

- (1) **Construction Access.** Licensee's access for construction, routine maintenance and repair and other non-emergency visits shall only be during business hours (defined as Monday through Friday, 7:00 a.m. to 7:00 p.m.) with twenty-four (24) hours advance notice to Licensor to arrange for an escort, which shall be paid for by Licensee. If the site access does not require an escort, Licensee shall call Licensor using the emergency phone number provided in Section 38, "Emergencies" prior to entry and before leaving site.
- (2) **Emergency Access.** In the event of an Emergency, Licensee may access the Site twenty-four (24) hours per day, seven (7) days per week, escorted if necessary and at Licensee's sole expense, by Licensor as arranged using the emergency phone number provided in Section 38, "Emergencies."
- (3) **Foot or Motor Vehicle Access.** Access to the Site may be by foot or motor vehicle.
- (4) **Additional Access Conditions.** Access to the Site shall be subject to such additional conditions as may be imposed by Licensor from time to time, which shall be in effect after thirty (30) days' notice to Licensee.
- (5) **Access Secondary to Licensor Operations.** Licensee access to Site is secondary to Licensor's power and water system operations and maintenance at the Site.
- (6) **Additional access limitations and/or instructions are included in Exhibit A "Site;"**

B. Limitation to Access Rights. Licensee acknowledges that the foregoing access rights may be subject to any limitations or restrictions on access imposed upon Licensor (and therefore upon Licensee) by the fee owner under any underlying license, easement, lease or license document relating to a particular Site. Licensee agrees to abide by any such limitations or restrictions.

13. PROTECTION OF PROPERTY AND PERSONS

A. Clean and Safe Site. At all times, including without limitation, upon completion of any portion of any Work, Licensee shall keep the Site reasonably cleared of all rubbish, refuse, surplus materials and other debris and keep the Site in a neat, clean and safe condition.

B. Precautions. Licensee shall take all reasonable precautions necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, Licensee shall erect and maintain such barricades, signs, flags, flashers and other safeguards as are required by applicable law or regulations or as reasonably required from time to time by Licensor. Licensee shall reasonably inspect all goods, materials, tools, Equipment and other items in an attempt to

discover any conditions which involve a risk of bodily injury (including death) to persons or a risk of damage to any property or the environment.

C. Obligation to Restore, Repair, or Replace. All of Licensor's or third party's property damaged, altered or removed in connection with the performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by Licensee to at least as good quality and condition as existed prior to such damage, alteration or removal.

14. COORDINATION AND SUSPENSION

A. Level of Coordination. Licensor has the right to define the level of reasonable coordination required for the Work at the Site. Licensor will respond to Licensee's request regarding coordination of any Equipment installation within twenty (20) days after receiving Licensee's request.

B. Interference/ Delay. Licensee acknowledges and anticipates that any Work may be interfered with and delayed from time to time on account of the concurrent performance of work by Licensor or others under contract with Licensor. Upon the occurrence of any interference, Licensee shall have the right to suspend Work pursuant to Section 14.D. "Suspension." Licensee shall fully cooperate and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

C. Conflicts, Deficiencies, or Defects. If any part of the Work depends upon the results of other work by Licensor or others, Licensee shall, prior to commencing the Work, notify Licensor in writing of any actual or apparent conflicts, deficiencies or defects in such other work that render it unsuitable for performance of the Work. Failure of Licensee to so notify Licensor shall constitute an acceptance by Licensee of such other work as suitable for performance of the Work.

D. Suspension. The Work or Permitted Use is subject to suspension by Licensor due to an Emergency or occurrence of interference, as determined by Licensor, and with reasonable notice to Licensee (within twenty-four (24) hours of an Emergency). Upon the occurrence of a suspension, the Annual Use Fee shall be abated on a prorated basis for the duration of the suspension or Licensee may terminate this Agreement upon fifteen (15) days' notice to Licensor.

E. Complaints. Licensee shall give immediate attention to, and shall use reasonable efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating Licensor in any way), all complaints received by Licensee from third parties arising out of or in connection with performance of the Work. Licensee shall promptly notify Licensor of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, Licensee shall use its best efforts to maintain and promote good public relations for Licensor and Licensee.

15. MAINTENANCE AND REPAIRS

A. Licensee's Obligations. Licensee shall have the following maintenance and repair obligations:

- (1) **Equipment Maintenance.** Licensee must, at all times during the term of this Agreement and at Licensee's sole cost and expense, keep and maintain the Equipment located by Licensee upon the Site in a structurally safe and sound condition and in good repair.
- (2) **Licensors Option to Repair.** If Licensee does not make repairs within ten (10) days after receipt of notice from Licensor requesting such repairs, then Licensor may, at its option, make the repairs. Licensee upon receipt of satisfactory documentation shall pay Licensor on demand Licensor's actual costs in making the repairs, plus Licensor's actual overhead.
- (3) **Extension of Cure Period.** If Licensee commences to make requested repairs within ten (10) days after any written notice from Licensor requesting such repairs and thereafter continuously and diligently pursues completion of such repair, then the ten (10) day cure period will extend for an additional sixty (60) days to permit the Licensee to complete said repairs.
- (4) **Emergency Repairs.** If repairs are needed due to an Emergency, Licensee must immediately make repairs. If Licensee fails to do so, Licensor may choose to make such repairs at Licensee's expense. In accordance with Section 12, "Site Access," Licensee shall obtain approval of the Licensor to access the Site and coordinate with Licensor's emergency operations and maintenance activities in relation to making said repairs.

B. Temporary Equipment. If Licensee is unable to use Equipment because of repairs required on the Site or for any other reason not caused by the fault of Licensee, then Licensee may, upon written notification to Licensor, immediately erect on the Site or an unused portion of the Property as approved by Licensor, temporary Equipment, while Licensor makes repairs to the Site, provided that such temporary Equipment will be removed within fifteen (15) days of completion of repairs or replacement of the Site.

16. CHANGES TO SITE

A. Authorization for Changes. Prior to making any material changes, upgrades, modifications, additions, or improvements to the Site including installation, modifications, upgrades, removal, or replacement of Equipment or utilities, Licensee must (i) submit a Proposal to revise Exhibit B, (ii) obtain Licensor's written approval of the Proposal, and (iii) execute a revised Exhibit B acceptable to Licensor pursuant to the requirements of

this Section. Removal of Equipment must be approved in writing and an Amendment executed, Exhibit B revised, or the Agreement terminated as applicable.

B. Proposal. Prior to any changes described in Section A above, Licensee shall submit to Licensor a Proposal. Said Proposal shall contain the following information:

- (1) A description of the Equipment to be installed or modified including as applicable:
 - Antenna physical description and location
 - Electronic cabinet physical description and location
 - Transmitter description to include frequencies
 - Complete Intermodulation study
 - Plan for minimizing visual impact of equipment at the Site;
- (2) Construction and relevant drawings; and
- (3) A narrative description outlining the proposed project, including an inventory of all equipment that will be located on the site.

C. Structural Engineer Design and Analysis. Any structural work on a structure on the Site, or any work involving a material alteration of any portion of the Site, must be designed by a licensed structural engineer licensed in the State of Washington. Licensor may, in its sole discretion, require an analysis of the Proposal from a licensed structural engineer.

- (1) **Final Design Approval.** Final designs and all calculations must be submitted to the Licensor as part of the Proposal for final approval.
- (2) **Design and Analysis Costs.** The cost of all structural design and analysis, including Licensor review fees in accordance with Exhibit C, shall be at the Licensee's sole cost and expense.

D. Approval

- (1) **Notice.** Licensor will use reasonable efforts to notify Licensee of its approval or disapproval of a Proposal within sixty (60) business days after receipt of the Proposal.
- (2) **Approval Contingent on Available Space and Safety.** Licensor may refuse to approve a Proposal where, in Licensor's sole opinion, there is insufficient space or Capacity on the Site or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standards.
- (3) **Approval.** Licensor may approve a Proposal if, in its sole judgment, exercised reasonably, Licensor determines that it (a) has sufficient space or Capacity, including planned future utility uses, to accommodate the

proposed Equipment, (b) Licensee meets all the requirements set forth in this Agreement, and (c) the Equipment and Proposal complies with all Applicable Standards.

(4) Purpose of Licensor Approval. Licensor's review and/or approval provided for in this Agreement, including, but not limited to review and approval of any designs, drawings, calculations, construction, and/or maintenance is for the sole purpose of protecting Licensor's ability to maintain its utility operations and rights in the Property and to assure Licensor that Licensee's uses of the Property are in accordance with the provisions and limitations of this Agreement and Licensor's policies and procedures. Licensor's review and/or approval provided in this Agreement is not intended nor to be construed as:

- a comprehensive engineering review or analysis of the request and its associated implications;
- consent, authorization, or acknowledgment that Licensee has obtained all required authorizations with respect to Equipment and/or Work; or
- any representation or warranty, express or implied, as to (i) the adequacy of the design, drawings, calculations, construction, reconstruction, and/or maintenance of the Equipment, Work, or Permitted Use; (ii) the suitability of the Property for construction, reconstruction and/or maintenance of the Permitted Use; or (iii) any obligation on the part of Licensor to insure that work or materials are in compliance with any requirements imposed by a Governmental Authority.

E. Exhibit B Revision

Upon approval, Licensor shall send Licensee a revised Exhibit B that must be acknowledged and approved by both parties before any Proposal Work may commence. This Agreement, and the execution thereof, shall not in itself constitute any such consent for said Proposal Work.

F. Exhibit C Revision

Upon approval, and if changes are significant enough to require a change in Annual Use Fee, Licensor shall send Licensee a revised Exhibit C that must be acknowledged and approved by both parties before proposed Work may commence.

17. EQUIPMENT INSTALLATION

A. Installation. Upon execution of this Agreement or execution of an Amendment after approval of Licensee's Proposal, Licensee shall install the Equipment in strict accordance with:

- (1) The provisions of this Agreement, to the extent it is not inconsistent with any Amendment, and
- (2) The executed Amendment, if applicable, including any conditions or qualifications specified by Licensor in any consent or approval.

B. Applications for Licensee's Licenses, Permits, or Approvals. Licensor may not unreasonably refuse to execute appropriate documents and applications as may be required (i.e., by virtue of Licensor's ownership of or rights in the Site) by any Governmental Agency with jurisdiction in order for Licensee to obtain the necessary licenses, permits or other approvals from such Governmental Agency to use the Site as contemplated by this Agreement or applicable Amendment. Provided, however, that Licensor shall not under any circumstances be obligated to execute any application or other document that, in Licensor's reasonable judgment, will in any way impair, limit or adversely affect Licensor's rights in, ownership of, or use of the Site or which creates an unjustifiable liability to Licensor. Any approvals sought from Licensor shall be at Licensee's sole expense.

C. Failure to Install Equipment. Licensee must install its Equipment within ninety (90) days of the Effective Date of this Agreement or within ninety (90) days of the execution of the applicable Amendment. If Licensee fails to install its Equipment within said ninety (90) days it will relinquish any permissions authorized by this Agreement or applicable Amendment and forfeit any fees paid.

D. As-Built Drawings. Licensee shall provide as-built drawings of the Site and Licensee's Equipment and/or Work within thirty (30) days of completion. Licensor may also request as-built drawings for Equipment or Work installed under any prior license agreements with Licensor.

18. UNAUTHORIZED IMPROVEMENTS

A. Unauthorized Improvements. Licensee shall not construct or place any Equipment or improvements on the Site or Property unless authorized in this Agreement, applicable Amendment, or written approval by Licensor. All improvements to or placement of Equipment on the Site without the written authorization of Licensor shall be deemed unauthorized and Licensor shall have the option, but not the obligation:

- (1) to demand that such unauthorized improvements be removed by Licensee at Licensee's expense,
- (2) to remove or cause to be removed such unauthorized improvements on behalf of the Licensee, in which case Licensee shall reimburse Licensor for all costs incurred by Licensor in connection with such removal immediately upon demand, or

- (3) to allow such unauthorized improvements or Equipment to remain in place at the Site pursuant to the terms of the Agreement and/or such other terms as specified in writing to Licensee by Licensor.

If Licensee fails to remove any unauthorized improvements or Equipment upon demand of Licensor, such shall become the property of Licensor without the payment of any consideration to the applicable Licensee therefor.

B. Licensee Inventory. The Licensee shall submit inventories to Licensor upon request during the term of this Agreement. Said inventory shall list all Licensee Equipment on the Site. The inventory may not be used in lieu of an Amendment or Proposal. If Licensee fails to submit an inventory when due, Licensor may at its sole discretion and with fifteen (15) business days written notice, and at Licensee's sole expense, perform an inventory of the Licensee's Equipment located on the Site and invoice Licensee for the full cost of the inventory. Licensee shall pay such invoice within thirty (30) days of receipt.

C. Licensor Inventory. Notwithstanding Subsection B above, Licensor reserves the right to conduct its own inventory of the Licensee's Equipment at any time, but not more than once per year, at Licensor's expense.

D. Unauthorized Equipment / Improvements Identified through Inventory. Equipment not previously approved and authorized in writing by Licensor shall be deemed to be an unauthorized improvement.

19. RESTRICTIONS

A. Licensee Subject to Underlying Rights or Authorization. Licensee may request copies of any and all applicable Instruments related to the Site subject to reasonable compensation. Licensee agrees to commit no act or omission which would constitute a violation of the terms and conditions of any Instrument for a particular Site.

- (1) **Licensor Consent.** Licensor shall not be required to obtain any consent required under any Instrument from a landlord, grantor, licensor, or other party to such Instrument for purposes of this Agreement.
- (2) **Instrument Restriction.** If a restriction contained in an Instrument for the Site prevents Licensee from installing, maintaining or operating the Equipment or accessing the Site, Licensee will be entitled to terminate this Agreement immediately.
- (3) **Instrument Termination.** Upon the termination or expiration of any Instrument with respect to the Site, this Agreement shall automatically terminate without further liability to either Party. Licensee acknowledges that some of Licensor's underlying Instruments may grant to the property owner the right to terminate such Instruments, and that in the event of such termination, this Agreement shall terminate concurrently therewith.

- (4) **Sale or Transfer of Site.** Upon any sale or other transfer of all or any portion of a Site, this Agreement will automatically terminate except to the extent the purchaser or transferee and Licensee enter into an agreement for Licensee's continued use of the Site and release Licensor from any further obligation or liability with respect to the Site. Licensor shall have no obligation to request or obtain such agreement from the purchaser or transferee.
- (5) **Licensor Obligation.** Licensor will not materially breach the terms or conditions of any deed, lease, or permit with respect to a particular Site in a manner that causes Licensee to lose its use of the Site.

20. TERMINATION

A. Licensee

- (1) **Termination for Site Unsuitability.** In addition to any other rights to terminate this Agreement, Licensee shall have the right to terminate this Agreement upon sixty (60) days prior written notice if Licensee is unable to use a Site for the Equipment in the manner originally intended by Licensee.
- (2) **License, Permit, or Certificate Rejection, Expiration, or Cancellation.** Licensee shall have the right to terminate this Agreement upon thirty (30) days prior written notice upon the occurrence of any of the following:
- a) any certificate, permit, license or approval affecting Licensee's ability to use the Site in the manner originally intended by Licensee is rejected, or
 - b) if any previously issued certificate, permit, license, or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency.

B. Licensor. Notwithstanding any other provision in this Agreement, Licensor shall have the right to terminate this Agreement for its convenience upon twelve (12) months prior written notice.

21. DEFAULT AND REMEDIES

A. Licensee Default. The occurrence of any one or more of the following events constitutes an "Event of Default" by Licensee under this Agreement:

- (1) **Failure to Pay.** If Licensee fails to pay, after thirty (30) days' notice from Licensor, the full amount of any fee or other payment due under this Agreement.

- (2) Interference. If any Equipment placed on the Site by Licensee unreasonably interferes with any Equipment located on the Site and Licensee:
- a) fails to immediately cease operation of said Equipment, and
 - b) fails to resolve the interference within thirty (30) days.
- (3) Failure to Perform an Obligation. If Licensee fails to perform or observe any term of this Agreement, and such failure continues for more than thirty (30) days after written notice from Licensor. However, such thirty (30) day cure period will be extended as reasonably necessary to permit Licensee to complete cure so long as Licensee commences cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure.
- (4) Site Abandonment. If Licensee deserts, abandons, or vacates any portion of the Site and fails to maintain any and all Equipment remaining at the Site.
- (5) Bankruptcy. If any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee, such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee is adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof.
- (6) Appointment of Receiver or Trustee. If a receiver, custodian, or trustee is appointed for Licensee or for any of the assets of Licensee and such appointment is not vacated within sixty (60) days of the date of the appointment.
- (7) Insolvency or Fraud. If Licensee becomes insolvent or makes a transfer in fraud of creditors.
- (8) Unauthorized Equipment. If Licensee places any Equipment on the site without prior approval from Licensor.

B. Licensor's Remedies

- (1) Termination. If an Event of Default occurs pursuant to this Section 21 "Default and Remedies," and while Licensee remains in Default, Licensor (without notice or demand except as expressly required above) may terminate this Agreement, in which event Licensee will, within thirty (30) days of such termination, vacate and surrender the Site to Licensor.

(2) Liability. Upon termination Licensee will become liable for damages equal to the total of:

(a) the actual costs incurred by Licensor for removing Licensee's equipment and/or restoring the Site.

(b) the Annual Use Fee earned as of the date of termination, plus interest thereon, as specified in Section 5 "Fees" from the date due until paid; and

(c) all other sums of money and damages, if any, owing by Licensee to Licensor.

C. Licensor Default and Licensee Remedies. If Licensor defaults in the performance of any of its obligations with respect to this Agreement, which default:

(1) continues for a period of more than thirty (30) days after receipt of written notice from Licensee specifying such default, or

(2) is of a nature to require more than thirty (30) days for remedy and continues beyond such time reasonably necessary to cure (and Licensor has not undertaken procedures to cure the default within such thirty (30) day period and diligently and continuously thereafter pursued such efforts to complete cure),

then Licensee may, as its sole and exclusive remedy, upon written notice terminate this Agreement. Provided, however, Licensor shall remain potentially liable for its sole negligence for personal injuries as set forth in Section 29 "Indemnification."

22. SURRENDER OF SITE; HOLDING OVER

A. Vacation and Removal. Upon the expiration or termination of this Agreement for any cause whatsoever, Licensee shall vacate the Site and restore it to as good or better condition as existed at the Effective Date except for reasonable use, wear and tear, casualty (if no fault of Licensee), or condemnation. Licensee shall remove its Equipment within thirty (30) days after termination of this Agreement. Licensee will repair any damage to Licensor Property caused during the removal of the Equipment, normal wear and tear excepted.

B. Holding Over. If Licensee fails to remove any improvements including its Equipment at the end of the thirty (30) day period and no extension has been granted, or if the improvements and/or Equipment remain at the end of any extended period authorized by Licensor, such improvements and/or Equipment shall be deemed unauthorized improvements.

C. Hold Over Period / Monthly License Fee. In the event that the Licensor, in its sole discretion, permits any Licensee-owned Equipment or other improvements to remain past the expiration of such thirty (30) day period the Licensee shall pay to Licensor a monthly license fee equal to 1/12th of 200% of the Annual Use Fee and Licensee Equipment shall be subject to all of the other terms of this Agreement then in effect with respect to the applicable Site during the Hold-Over Period. The "Hold-Over Period" means the time from the Termination Date until the Equipment or other improvements are removed.

D. Termination of Hold-Over Period. Licensor shall have the option to require Licensee's removal of all Equipment upon giving ten (10) days written (second) notice of termination of the Hold-Over Period. If not so removed, at Licensor's option the Equipment shall become the property of the Licensor. Licensor may choose to remove said Equipment and charge Licensee for all costs related to such removal.

E. Termination Date. For purposes of this Section, if this Agreement is terminated under Section 20, the effective termination date specified in the notice of termination delivered by the Licensor shall be the "Termination Date" with respect to the Site.

23. ENVIRONMENTAL HAZARDS

A. Hazardous Substances. Licensee will not bring, keep or transport any Hazardous Substances to, on or across the Site or Property without Licensor's prior written approval. Licensee may keep on the Site substances used in back up power units such as batteries and diesel generators commonly used in the wireless telecommunications industry. Licensee's use, storage, and handling of any approved substances constituting Hazardous Substances must comply with all applicable laws, ordinances, regulations, Licensor's requirements, and other provisions of this Agreement governing such use, storage, and handling. Under no circumstances will Licensee dispose of any Hazardous Substances on the Site. This provision shall survive termination of this Agreement.

B. Notification. Licensee shall immediately notify Licensor of any of the following:

- (1) all spills or releases of any Hazardous Substances in, on, or adjacent to the Site,
- (2) all failures to comply with any federal, state, or local law, regulation, or ordinance, as now enacted or as subsequently enacted or amended,
- (3) all inspections of the Site or Property by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Site or Property,

(4) all regulatory orders or fines, or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Site or Property.

C. Provision of Correspondence or Reports. On request, Licensee shall provide copies to Licensor of any and all correspondence, pleadings, and/or reports received by or required of Licensee or issued or written by Licensee or on Licensee's behalf with respect to the use, presence, transportation, or generation of Hazardous Substances in, on, about, or adjacent to the Site.

D. Environmental Hazard Indemnity. Licensee and its agents, contractors, and subcontractors shall defend, indemnify, hold harmless Licensor and its officials, officers, board members, council members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to Property or the Site attributable to Licensee's use of Licensor's Property and/or the Site.

24. CASUALTY, REPLACEMENT, RELOCATION, OR CONDEMNATION OF SITE

A. Casualty. If there is a casualty to any structure upon which the Licensee's Equipment is located, Licensor may elect to repair or restore the structure and, to the extent Licensee has the necessary rights or permission to do so, Licensee may immediately seek approval to erect on the Site or a portion of the Site temporary Equipment while Licensor makes repairs to the Site. Permissions to install temporary Equipment are at the sole discretion of the Licensor but will not be unduly withheld as long as the temporary Equipment and associated Work does not interfere with Licensor's own restoration. Licensor will provide Licensee with reasonable notice of its plans to repair or restore a structure. Licensor has the right to remove Licensee's Equipment prior to the start of such repair or restoration if Licensee fails to do so. Upon completion of such repair or restoration, Licensee will be notified when the site is available for reinstallation of their Equipment. In the event such repairs or restoration will, in Licensor's reasonable estimation, require more than sixty (60) days to complete, Licensee will be entitled to terminate this Agreement upon thirty (30) days prior written notice.

B. Replacement. If Licensor, after thirty (30) days prior notice to Licensee, replaces any improvement on the Site that the Licensee has attached Equipment to, Licensee is solely responsible for the cost of the transfer of said Equipment to the new improvement.

C. Relocation. If Licensor is required or requested to substantially relocate the Site and/or make related improvements by competent governmental or other entity with appropriate authority, Licensor shall provide Licensee reasonable notice prior to such relocation or making improvements and Licensee at its option may terminate this Agreement under the

provisions of Section 20 "Termination." In the event Licensee does not desire to terminate this Agreement but to relocate its Equipment to the new Site, Licensee must secure an Amendment to this Agreement or new Agreement acceptable to both Parties. Licensee shall be solely responsible for the cost of the relocation of said Equipment to the new location.

D. Condemnation. If there is a condemnation of the Site including, without limitation, a transfer of the Site by consensual deed in lieu of condemnation, then this Agreement will terminate upon transfer of title to the condemning authority, without further liability to either Party. Licensee may pursue a separate condemnation award for the Equipment from the condemning authority provided that such award does not reduce the amount of Licensor's award.

25. WARRANTIES

A. Mutual Warranties. Each Party mutually represents and warrants to the other:

- (1) that it has the full right, power, and authority to enter into this Agreement;
- (2) that entering into this Agreement and the performance thereof will not violate any laws, ordinances, restriction, covenants, or other agreements under which said Party is bound, provided, however, that the foregoing is subject to, and will not limit in any way, the rights of Licensor and the obligations of Licensee under Section 21, "Default and Remedies," and provided further that, to the extent the foregoing warranty is made by Licensor, such warranty will not apply to any violation or breach that is caused by Licensee's failure to obtain and comply with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement;
- (3) that each of the persons executing this Agreement on behalf of each Party represents and warrants that said Party is a duly organized and existing legal entity;
- (4) that the persons signing on behalf of the municipal corporation, corporation, company, limited liability company, or limited partnership were authorized to do so;
- (5) that the Party is qualified to do business in Washington State or will be qualified prior to undertaking any activities at the Site that would require the Party to be qualified to do business in such state;
- (6) that Licensee will be solely responsible for payment of any fees associated with any dealings with any real estate brokers or agents on Licensee's behalf in connection with the negotiation of this Agreement.

B. Licensee Warranties. Licensee represents and warrants:

(1) that it is, and at all times during the Initial Term or Renewal Terms shall be, properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and Licensee's system of which the Equipment is a part;

(2) that it shall be, and operate as, an independent entity (not a contractor, agent or representative of Licensor) in the performance of the Work, in the Permitted Use of the Site, and the operation of the Equipment and Licensee's system; and

(3) it has acquainted, or will fully acquaint, itself and its employees or contractors and agents with the conditions relating to the Permitted Use and Work that licensee will undertake as permitted by this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such Work.

26. NO WARRANTY AS TO SUITABILITY OR ADEQUACY OF SITE

LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SITE IS SUITABLE FOR THE PERMITTED USE. LICENSEE HEREBY ACKNOWLEDGES THAT LICENSOR DOES NOT WARRANT THE SUITABILITY OR FITNESS OF THE SITE FOR THE PURPOSES FOR WHICH LICENSEE MAY DESIRE TO USE IT; NOR DOES LICENSOR WARRANT THE ADEQUACY OF THE SITE'S LOCATION, ITS CONDITION, THE CONDITION OF ANY STRUCTURE OR APPURTENANCES FOR ANY PURPOSE. LICENSEE TAKES THE SITE "AS IS", "WHERE IS" AND "WITH ALL FAULTS".

27. INSURANCE

A. Required Insurance Coverage. During the Term of this Agreement and at its sole expense, Licensee and its contractors shall obtain and maintain the following insurance:

(1) **Commercial General Liability.** A policy of Commercial General Liability (CGL) insurance covering claims for bodily injury, death, personal injury, and/or property damage arising from the use of the Property and/or out of the Licensee's operations on the Licensor's Property. All insurance shall cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) provisions. Licensor shall be named as an additional insured by amendatory endorsement, providing coverage to the Licensor for liability arising in whole or in part by Licensee's on-going and completed operations.

(2) Pollution Legal Liability. A policy of Pollution Legal Liability insurance that shall name the Licensor as an additional insured by amendatory endorsement. Blanket additional insured provisions will not be accepted. The Licensee shall obtain any endorsements necessary to extend coverage for damage to the premises occupied by the licensee, or obtain coverage on a first party basis for the pollution exposure for the premises.

(3) Commercial Automobile Liability. The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensor's property, a policy of Commercial Automobile Liability coverage, with the Licensor named as an additional insured. Coverage shall apply to owned, non-owned and hired vehicles.

(4) Worker's Compensation and Employer's Liability insurance.

(a) Employer's Liability ("Stop Gap") Insurance. Licensee shall buy employer's liability insurance.

(b) Worker's Compensation Coverage. Licensee shall comply with all State of Washington worker's compensation statutes and regulations. Worker's compensation coverage shall be provided for all employees of Licensee and employees of any subcontractor or sub-subcontractor. Except as provided by law, Licensee waives all rights of subrogation against Licensor for recovery of damages to the extent they are covered by worker's compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Licensee, its contractors, subcontractors, or sub-subcontractors fails to comply with all State of Washington worker's compensation statutes and regulations and Licensor incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify Licensor. Indemnity shall include all fines, payments of benefits of Licensee or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

B. Insurance Requirements. For all insurance policies required by this section:

(1) Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensor reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.

(2) Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best

Company rating of no less than A-V) subject to review and approval by the Licensor.

(3) Coverage shall be primary over and non-contributing to the Licensor's own insurance coverage or program.

(4) No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensor's prior written approval. To assure that the Licensor receives the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensor, notwithstanding any negligence or liability on the part of the Licensor.

(5) All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.

(6) All policies required by this section shall provide policy limits of no less than \$5,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$10,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.

(7) The Licensee and the Licensor shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensor is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensor to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described above, shall be filed with the Licensor prior to the use of any rights provided by the Agreement. The certificate shall be filed with the acceptance of the Agreement and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Agreement, then, in that event, the Licensee shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Agreement.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Agreement, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

F. Compliance. Licensee will not do or permit to be done in or about the Site, nor bring or keep or permit to be brought to the Site, anything that:

(1) is prohibited by any insurance policy carried by Licensor covering the Site, any improvements thereon, or the Site; or

(2) will increase the existing premiums for any such policy beyond that contemplated for the addition of the Equipment.

Licensor acknowledges and agrees that the installation of the Equipment upon the Site in accordance with the terms and conditions of this Agreement will be considered within the underwriting requirements of any of Licensor's insurers and such premiums contemplate the addition of the Equipment.

G. Bond. Licensee shall, upon request from Licensor, provide a performance / payment bond from a surety company reasonably acceptable to Licensor in an amount sufficient to fulfill the Licensee's obligations as set forth herein including but not limited to the removal of Equipment located at each Site. The amount of the surety bond shall be determined by the Licensor.

28. RISK OF LOSS

Licensee shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work, unless destruction of or damage to the Equipment is solely caused by an act of gross negligence solely related to Licensor's activities on the Site.

29. INDEMNIFICATION

To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor, its officers and employees, from any and all claims for damages or loss to the Licensor's operations or property and from any and all claims or litigation arising in connection

with this Agreement and/or Licensee's use of Licensor's real and/or personal property. This includes damages, loss, and personal injury (including death) to property or persons including injuries or death to Licensee, or Licensee's agents, contractors, or employees which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property which is the subject of this Agreement or associated with the Permitted Use, or caused or occasioned by an act, deed, or omission of the Licensee, Licensee's agents, employees, guests, customers, or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and this waiver has been mutually negotiated. The Licensor agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

30. SERVICE INTERRUPTION

Licensor shall not be liable to the Licensee or to the Licensee's customers, and the Licensee hereby indemnifies, protects and saves harmless Licensor against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by the Licensee's customers, for an interruption to the service of the Licensee, or for interference with the operation of the Licensee's Equipment or for interference with the operation of the Licensee's Equipment.

31. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LICENSOR SHALL NOT HAVE ANY LIABILITY TO LICENSEE FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF LICENSEE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITES, OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE.

32. RELATIONSHIP OF PARTIES

Licensee shall be, and operate as, an independent party in the performance of the Work and the operation of the Equipment and Licensee's system. In no event shall Licensee be authorized to enter into any agreements or undertakings for or on behalf of Licensor or to act as or be an agent or representative of Licensor.

This Agreement is not intended to create any partnership, joint venture, or other arrangement between the Parties. Neither Party shall have any authority to act for or to assume any obligation or responsibility on behalf of the other. Nothing in this Agreement creates any fiduciary relationship between the Parties. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such

other person, firm, organization, or corporation shall have any right or cause of action hereunder, except as may be otherwise provided herein.

33. ASSIGNMENT

A. Assignment by Licensee.

Licensee shall not assign this Agreement or any portion of its rights in this Agreement, except as follows:

(1) Acquiring Affiliate. This Agreement may be assigned to an Acquiring Affiliate pursuant to the requirements of this subpart. Licensee must provide written notice of said assignment to Licensor. The Acquiring Affiliate must certify to Licensor in writing (and provide such documents as may be reasonably requested by Licensor to establish) that the Acquiring Affiliate (a) is assuming all of the obligation of Licensee under this Agreement, and (b) is ready, willing and able to comply with all of the provisions of this Agreement; and provided further that Licensee furnishes to Licensor such information regarding the Equipment and Work affected by such assignment or transfer, if any, as may reasonably be requested by Licensor.

(2) Other Assignments. Licensee may not assign this Agreement to any other person or entity except with the prior written consent of Licensor, which consent shall not be unreasonably withheld. In any event, no assignment or sublease, or otherwise, of this Agreement shall relieve Licensee from any of its liabilities or obligations under this Agreement. Licensee may be relieved of all future performance liability and obligations under this Agreement after an assignment if approved by Licensor. Subject to the foregoing restrictions on assignments without the prior written consent of Licensor, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

(2) Name Change. If during the Term of this Agreement, Licensee changes its name, Licensee shall provide Licensor with documentation legally supporting the name change within sixty (60) days of the effective date of the change.

B. Integral Part of Licensee's Equipment. Notwithstanding the provisions in Section 33.A. above Licensee is expressly prohibited from permitting, licensing, or sublicensing any person or entity to place equipment on the Site that is not an integral part of Licensee's Equipment authorized under this Agreement and shown on Exhibit B.

C. Assignment, Sale, Use, or Transfer by Licensor. Licensor may make any sale, license, use or transfer of any Site, provided such sale, license, use or transfer is subject to the terms and conditions of this Agreement.

34. LIENS

A. No Liens Permitted. Licensor's Property is not subject to being foreclosed upon by Licensee's lenders, creditors, contractors or materialmen. Therefore, Licensee must keep all Sites free from any liens arising from any Work performed, materials furnished, or obligations incurred by or at the request of the Licensee. Licensee retains the right to use the Equipment as collateral in financial transactions to the extent that Licensor's rights and interests are not affected. However, all financing agreements are subject to the provisions of this Agreement.

B. Costs to Discharge Liens. Licensee shall indemnify Licensor for any costs, damages or expenses incurred as a result of the filing of such lien including amounts paid by Licensor for the discharge or satisfaction of any lien, and all reasonable attorney's fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all reasonable disbursements in connection therewith.

35. PROPRIETARY INFORMATION

Any materials and other written electronic records submitted by Licensee to Licensor are subject to disclosure under the Public Records Act, Chapter 42.56 RCW.

Any submitted materials, records, or documents that Licensee claims are exempt from disclosure under the Public Records Act must be clearly designated as such. Each page, or portion thereof, that contains exempt material must be identified and the particular exemption from disclosure upon which Licensee is making the claim must be identified by the statutory citation number. Licensor will consider Licensee's request for exemption from disclosure. However, Licensor will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. If a public record request is made regarding materials that Licensee has claimed are exempt, Licensor shall provide Licensee with notice of the request and allow Licensee ten (10) business days to seek a court injunction against the requested disclosure prior to Licensee fulfilling the public records request. All expense of any such action shall be borne by Licensee, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. Licensor shall not be liable for any release where notice was provided and Licensee took no action to oppose the release of information.

36. NOTICES AND COMMUNICATIONS

A. Formal Notice. Any formal notice, request, approval, consent, instruction, direction or other communication given by either Licensor or Licensee to the other pursuant to this Agreement shall be in writing and shall be delivered by

(1) first class mail, return receipt requested or

(2) by reputable overnight courier service to the individuals denoted below, unless otherwise directed in writing, at the address provided:

For the Licensor :

For Licensee:

Tacoma Public Utilities
ATTN: Jennifer Allen
3628 S. 35th Street
Tacoma, WA. 98409

Name/Title: _____
Address: _____

C. **Informal Notice.** Informal notices such as billings, technical or routine business communications may be by email with original being mailed. Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this Section. Notice is deemed received one (1) business day following deposit with a reliable courier, or three (3) business days following first class mailing.

D. **Coordination of Site Maintenance:** Communications regarding need to conduct maintenance on the site, up to an including service interruptions will be communicated to the following contacts:

Licensor Primary: Jenni Allen, jallen@cityoftacoma.org, (253) 502-8412

Licensor Secondary: Terry Ryan, tryan@cityoftacoma.org, (253) 502-8793

Licensee Primary: _____

Licensee Secondary: _____

Each Party shall promptly notify the other of any change in such Party's phone number(s).

37. TIMELY RESPONSE

Each Party shall take such prompt action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation of continuing performance of this Agreement.

38. EMERGENCIES

In the event of an Emergency relating to the Site, Licensee shall immediately contact Licensor at the emergency phone number below and take immediate action to correct any safety or use

problems, even if the full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

Licensor / Power Site: Tacoma Power Dispatch, (253) 383-1076

Licensor / Water Site: Water Control, (253) 502-8344

Licensee: _____

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

39. DISPUTE RESOLUTION

A. Dispute Resolution. Except as provided otherwise in this Agreement, any controversy between the Parties arising out of this Agreement or breach thereof, is subject to the mediation process described below.

(1) Meetings. A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. The meeting will be attended by individuals with decision making authority regarding the dispute.

(2) Nonbinding Mediation. If within sixty (60) days after such meeting the Parties have not succeeded in resolving the dispute, they will within thirty (30) days submit the dispute to a mutually acceptable third-party mediator who is experienced in dispute resolution. The Parties will participate in good faith in the mediation and the mediation process. The mediation shall be nonbinding.

(3) Costs and Fees. The costs of mediation, including any mediator's fees and costs for the use of facilities during the hearings, shall be borne equally by both Parties. Each Party's costs and expenses will be borne by the Party incurring them.

40. FORCE MAJEURE

If a Party is delayed or hindered in, or prevented from performance required under this Agreement by reason of Force Majeure (other than any delay or failure relating to payment of money, including, without limitation, the Annual Use Fees and all reimbursable costs and expenses described elsewhere in this Agreement) such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

41. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

42. SURVIVAL

All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

43. BINDING EFFECT

This Agreement will be binding on and inure to the benefit of the respective parties' successors and permitted assignees.

44. NON-WAIVER

The failure of either Party to insist upon or enforce strict performance by the other Party of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

45. HEADINGS

The headings of sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections.

46. EXAMINATION OF RECORDS

Licensee shall promptly furnish Licensor with such information-reasonably related to the Work or the Equipment as may from time to time be reasonably requested by Licensor.

47. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Washington. The venue for any legal action commenced to enforce any provision of this agreement shall be Pierce County, Washington.

48. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained

in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement must be in writing and executed by both parties.

[SIGNATURES]

CITY OF TACOMA,
DEPARTMENT OF PUBLIC UTILITIES

BY: _____

Date: _____

Approved as to form:

Deputy City Attorney

Date: _____

Approved Finance:

Finance Director

Date: _____

LICENSEE

BY: _____

Title: _____

Date: _____

Exhibit A
SITE

1. Licensor's Site Location Name:
Licensee Site Location Name:

2. Address of Site Location:

3. GPS Coordinates of Site

4. Site Legal Description:

5. The Site is:
 Owned by Licensor
 Leased by Licensor (copy attached)
 Used under easement to Licensor (copy attached)

6. 5. Utility services:
Power provided by: _____
Telecommunications Landline provided by: _____

Exhibit B
Permitted Use and Equipment

1. Permitted Use:

[To be completed based on plans and specifications.]

2. Description of Site:

[e.g. 20' of vertical space located upon Licensee's structure, and a 6' x 6' area of land for support facilities]

3. Antenna Physical Description and Location:

[e.g. array of 6 ea. mast antennas, vertically oriented, with steel mounting structure extending approx. 10' from existing lattice tower, at elevation _____.]

4. Structural Integrity Study

Received _____ or waived _____ by Licensor (initials) _____ Date: _____

5. Electronic Cabinet Physical Description and Location:

[e.g. 3 ea. cabinets, 3'Wx3'Dx6'H each, elevated from the ground on wooden platform and posts, with power entrance conduits and communications cable conduits.]

6. Transmitter Description:

Manufacturer: _____

Model: _____

Frequencies: _____

Bandwidth: _____

Power (ERP): _____

7. FCC License Number: _____ (Attach Copy)

Date Issued: _____

Licensee warrants that its use of the facility shall at all times be limited to and in compliance with the listed FCC license.

8. Drawings Received by Licensor:

Equipment Layout and Detail: Received (initials) _____ Date: _____

Antenna Attachment and Detail: Received (initials) _____ Date: _____

Site Plans and Elevations: Received (initials) _____ Date: _____

Licensee warrants that it will notify Licensor, and provide copies, of any map, specification, schedule, drawing, analysis, and/or study, including any requirements arising from the permitting process that is being generated in development and/or operation of the Site.

Drawings attached as Exhibits B-1, B-2, [etc.]
Identify Drawings.

9. Intermodulation Study. An intermodulation study shall be performed by the Licensee, and a copy provided to the Licensor, for each transmitter added by the Licensee to a Site containing other transmitters or in the proximity of other transmitters. New transmitters shall be designed to avoid the potential for intermodulation interference.

Intermodulation approved by (licensor): Initial: _____ Date: _____

10. Construction work requested of Licensor by Licensee:

11. Site Access Contacts

The Site is accessed via a gate-lock system that accommodates a double-lock mechanism, so that Licensor can retain its own separate key/lock system while accommodating Licensee's key/lock system. Tacoma [WATER/POWER] must have access to the site at all times. The contact for Tacoma [WATER/POWER] is [CONTACT NAME], [CONTACT PHONE].

12. Site Specific instructions and limitations: [if any]

13. Additional Coordination Provisions between Licensor and Licensee: [if any]

14. 24/7 Emergency contacts for this agreement are as follows:

- a. Licensor:
- b. Licensee:

15. Additional Provisions: [if any]

**Exhibit C
Fee Schedule**

This fee schedule is made apart of the Site License Agreement this ____ day of ____ - 20__ by the City of Tacoma, Department of Public Utilities. This fee schedule is governed by Section 5 (Fees) and Section 6 (Additional Fees and Taxes) of the Site License Agreement.

1. Fee:

The Annual Use Fee for the site covered by this Agreement will be \$XXXXX Calculated as follows:

- a. Equipment Mounted to tower/structure:
- b. Equipment panels/electrical/communications equipment:
- c. Land/space for equipment cabinets and other equipment
- d. Easement for communications lines
- e. Utilities
- f. Other

The first day of billing under this Site License Agreement or Amendment thereto shall be: ____ of _____, 20__

The first year Annual Use Fee will be prorated from this date until December of the same year.

2. Additional Fees/Taxes:

Monthly Fees are subject to Utility Tax Pass Through (Y/N)

Current Utility Tax Pass Through Rate: _____%

Monthly Fees are subject to Leasehold Improvement Tax(Y/N)

Current Leasehold Improvement Tax Rate: _____%

Exhibit D
MINIMUM STANDARDS AND SPECIFICATIONS

Licensee shall comply with the following minimum standards:

A. General Requirements

1. Licensee shall follow all applicable health and safety codes for all activities within the scope of this agreement.
2. Licensee shall comply with Tacoma Public Utilities site security requirements.
3. Licensee shall follow all manufacturer safety and installation instructions.
4. Licensee shall follow the guidelines and standards in the latest version of Motorola Solutions *Standards and Guidelines for Communications Sites*, commonly known in the telecommunications industry as "Motorola R56" or "R56."

B. Planning: For new construction, new installations, or equipment modifications, the Licensee shall provide site development drawings. Site development drawings shall include, as a minimum, if applicable at the Licensor's discretion:

1. Site Plan
2. Location of access road with access road profile, if applicable
3. Location of new and existing utilities
4. Foundation plans
5. Grounding and Bonding Drawing with Grounding Electrode System Plan, if applicable
6. Tower Plan, if applicable
7. Tower Elevation drawing showing new and existing antennas with mounting system and cabling detail
8. Equipment Shelter Foundation Plan
9. Equipment Shelter Elevation drawings showing doorways, HVAC locations, utility entrances, and telecommunications cable entries
10. Fence and guy wire plans

C. Site Walks are expected in order to review construction, installation, or modifications, and to familiarize the parties with the plans, roles, responsibilities, schedule, and any other aspects of the work.

D. Permitting, Zoning, and Regulatory Considerations

1. Obtaining permits and complying with state, county, and local codes and regulations is the responsibility of the Licensee.
2. Under the Americans with Disabilities Act (ADA), Licensee "must provide reasonable accommodations to protect the rights of individuals with disabilities in all aspects of employment."
3. All equipment shall be licensed and operated in full accordance with all applicable rules and regulations of the regulating agency (e.g. FCC). There shall be no modifications which violate "FCC Type Acceptance."

4. Each transmitter and receiver at the site shall be identified with a reference copy of the Federal Communications Commission (FCC) license or authorization, if applicable, name of person or service agency responsible for repairs, their 24-hour telephone number, and the equipment transmit and/or receive frequencies.
- E. A Notice to Proceed will be issued by Tacoma Public Utilities to Licensee. Licensee shall not begin construction, installation, modifications, or removal prior to the receipt of a Notice to Proceed.
- F. Telecommunications Building
1. This section shall apply to building, shelters, cabinets/enclosures, and vaults containing telecommunications equipment.
 2. Licensee is responsible to comply with Washington state Department of Labor and Industries requirements for modular buildings, if applicable.
 3. Buildings, shelters, and cabinets/enclosures shall use a "single point" grounding and bonding system.
 4. All buildings and shelters shall be designed and operated to prevent intrusion of moisture, animals, and insects.
 5. Seismic design factors shall be incorporated into buildings, shelters, and cabinets/enclosures.
 6. Telecommunication line entry ports shall be weatherproof and specifically designed for this purpose.
 7. Heating, ventilation, and air conditioning shall be provided to maintain proper environmental conditions specified by the manufacturer of each piece of telecommunications equipment.
 8. All lighting shall provide for a safe and energy efficient work environment.
 9. Licensee shall provide fire protection and safety in compliance with applicable fire codes to ensure personal safety.
 10. Licensee has a shared responsibility to check, maintain, and replace all safety equipment.
 11. For buildings or shelters provided by Licensee, the Licensee shall provide the following safety equipment permanently located in all equipment (or in close proximity to equipment locations):
 - a. First aid kits
 - b. Eye wash station
 - c. Battery safety equipment, if applicable
 - d. Construction/installation safety equipment
 - e. Safety markings and barriers
 12. Signage and Labels:
 - a. Licensee shall provide emergency 24-hour contact information with sufficient knowledge and authority to approve emergency shutdown of Licensee equipment.
 - b. Signage shall include Licensee name, Licensee site identification, and Tacoma Public Utilities site identification.

- c. Licensee AC and DC power equipment shall be labelled identifying the means of disconnecting AC and DC power from the Licensee equipment.
- d. Depending on site conditions, additional signage and labels may be required including, but not limited to:
 - 1. Battery room signage,
 - 2. High voltage hazards
 - 3. RF energy emissions hazards

- G. Interior and exterior grounding and bonding shall comply with the Grounding and Bonding chapter in Motorola Solutions R56.

- H. All Licensee AC and DC power sources shall have provisions for lockout and tagout to work safely on circuits or equipment.

- I. All AC and DC power systems shall be UL Listed and the installation shall comply with latest electrical codes adopted by Washington state and the Authority Having Jurisdiction.

- J. Licensee shall provide and install surge protection as needed to protect equipment in the building, shelter, or cabinet/enclosure especially entrances for AC power, telephony/data circuits, RF cabling, and tower lighting systems.

- K. Licensee shall design, install, operate, and maintain equipment to minimize site interference from internal system intermodulation, exterior intermodulation, transmitter sideband noise, receiver desensitization, co-channel, adjacent channel, and passive intermodulation.
 - 1. All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products in accordance with the requirements of the Western Washington Cooperative Interference Committee (WWCIC) Engineering Standard #6 dated January 1997 or later.
 - 2. A bandpass filter is recommended at the input of all receivers for the purpose to protect against RF energy "off frequency" from mixing in a non-linear device such as the first RF amplifier in a receiver, which can re-radiate causing interference. The band reject duplexer (cross notch duplexer) may not be used without a cavity/isolator outlined above.
 - 3. Single braid coax cable is prohibited. Double shielded cable must have over 98.5% shield coverage.
 - 4. Jacketed coaxial cable is required, unjacketed transmission line of any type is prohibited.

- L. Equipment Installation
 - 1. Equipment installation shall be performed by properly trained and qualified personnel using proper protective equipment.

2. Licensee shall be responsible to maintain a safe working environment and comply with applicable safety rules, regulations, and codes.
3. Walkways, aisles, entrances, and exits shall be kept clear.
4. Cable trays, equipment racks, cabinets, and seismic bracing shall not obstruct lighting, safety equipment, smoke detectors, HVAC ducts, electrical equipment, etc.
5. Tools and ladders shall be used for their intended purpose.
6. Licensee shall maintain minimum clearances of 24" on either side of the center line of fixed ladders and 30" of clear space on the climbing side of the fixed ladder. No equipment, mounting hardware, or cabling shall be installed in the minimum clearance areas or the area between the ladder and the structure.
7. Telecommunications equipment shall not be installed to restrict adequate workspace for electrical equipment as codified in the National Electrical Code.
8. Telecommunications equipment shall not be installed to restrict service access to any other piece of equipment such as HVAC units, security systems, alarm/control systems, etc.
9. Licensee shall maintain a minimum clearance of 30 inches for servicing telecommunications equipment. For front access equipment the minimum clearance shall be 30 inches in front of the equipment and minimum clearance of 30 inches behind the equipment is required for rear access equipment.
10. Cabling practices shall conform to the applicable industry standards (i.e. NEC, R56) and industry best practices.

M. Removal and Restoration

1. Fees in Exhibit C shall apply until all equipment in Exhibit B have been removed and until the completion of restoration.
2. Removal of equipment and associated work activities shall restore the tower, building, enclosures, cabinets/racks, land, etc. to its original condition to allow future use.
3. All equipment removal work activities shall be performed by qualified personnel.
4. Adequate protection for all work equipment as well as the tower, building, enclosures, cabinets/racks, walkways, conduits, access road, fences, etc. in the removal area shall be protected and the protection shall also be removed at the completion of the removal activities.
5. All unused cables shall be removed and remaining cables shall be properly routed, bundled, and secured,
6. All AC circuits shall be properly terminated. Open AC knockouts shall be closed. Positions of all unused breakers shall be covered.
7. Building penetrations shall be permanently sealed and watertight.
8. Sharp objects, protruding anchor bolts, etc. shall be removed, cutoff, or otherwise modified to eliminate safety hazards.

EXHIBIT E

RADIO INTERFERENCE POLICY STATEMENT

Licensee shall comply with Licensor's Radio Interference Policy Statement. Licensor's Radio Interference Policy Statement follows:

- A. **Radio Interference.** Licensee's Equipment, Work, and operations at the Site and Property shall not interfere with the communications configurations, frequencies or operating equipment of other users that were installed on the Property prior to Licensee's Equipment, Work, and operations. In the event radio interference (RI) occurs all users of the Site are required to participate in solving the problem by providing technical personnel and test equipment to locate the source of the specific problem within a reasonable amount of time. The user(s) found to be causing the interference shall be responsible for resolving such interference at their sole expense. In the event that such interference resulting from users other than Licensee is not corrected within thirty (30) days, Licensee may terminate the SLA per Section 20 "Termination." Specifically as to Licensee, Licensee shall not use the Site in any way which interferes with the use by Licensor or any other tenant or Licensee. All equipment must be maintained in good working order and meet original manufacturers and FCC specification for reduction of transmitter spurious radiation.
- B. **Compliance.** Involved systems, not in full compliance with the standards, will be asked to comply immediately.
- C. **Minimum Standards.** The standards listed are minimums found to be good engineering practices in the operation and maintenance of electronic sites.
- D. **Intermodulation Study.** An intermodulation study shall be performed by the Licensee, and a copy provided to the Licensor, for each transmitter added by the Licensee to a Site containing other transmitters or in the proximity of other transmitters. New transmitters shall be designed to avoid the potential for intermodulation interference.
- E. **Examination for Interference.** Licensor reserves the right to examine for any harmful interference before Licensee initiates service.



RESOLUTION NO. U-11061

1 A RESOLUTION related to extending the Master License Agreement for
2 telecommunication service providers.

3 WHEREAS the passage of the 1996 Telecommunications Act
4 deregulated the telecommunications industry and resulted in increased
5 numbers of telecommunication service providers seeking to use the City of
6 Tacoma, Department of Public Utilities, Light Division (d.b.a. "Tacoma Power")
7 and Water Division (d.b.a. "Tacoma Water") properties for unmanned radio
8 antenna sites, and
9

10 WHEREAS, Tacoma Public Utilities ("TPU") developed a Telecom
11 Licensing Program to manage those requests that included a Master License
12 Agreement ("MLA") to be used as a template for agreements between TPU and
13 the service providers, and
14

15 WHEREAS, on September 10, 1997, the Public Utility Board of the City
16 of Tacoma ("Board") authorized the City of Tacoma to use and implement the
17 MLA for telecommunication service providers to use Tacoma Light and Water
18 Divisions' unmanned radio antenna sites, and
19

20 WHEREAS the MLA was approved initially for a 5-year term, and
21 allowed up to 3 additional 5-year terms, for a total potential MLA term of 20
22 years, and
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24 WHEREAS, over 20 years have passed since the MLA was authorized
25 for use by the Board, and many MLA's executed with various entities are now
26 expiring or have expired, and



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WHEREAS, due to the age of the program, Tacoma Water, Tacoma Power and Legal have commenced a detailed and comprehensive review of Licensor's MLA contractual documents and the MLA program to bring the program up to date and align standards with current practices in the industry, this effort is expected to continue into 2021, and

WHEREAS Tacoma Water and Tacoma Power are requesting that the existing executed MLAs be extended through December 31, 2021, Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Public Utility Board hereby approves the extension of the term of the Master License Agreement to December 31, 2021, and authorizes the proper officers of the City of Tacoma to implement, use, and execute amendments to the executed MLAs, and, if necessary, specify that said amendments apply retroactively to the date of expiration, said amendments to be substantially in the same form as on file with the Clerk and as approved by the City Attorney.

Approved as to form and legality:

Tom V. Harrell
Chief Deputy City Attorney

Charles Jacobs
Clerk

[Signature]
Chair

[Signature]
Secretary

Adopted 2-27-19



RESOLUTION NO. U-9288

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3 WHEREAS passage of the 1996 Telecommunications Act has resulted
4 in further deregulation of the telecommunications industry, and has resulted
5 in an increasing number of telecommunications service providers seeking to
6 use Light and Water Division properties for unmanned radio antenna sites,
7 and the Divisions have now developed a Master License Agreement because
8 they desire to facilitate community access to telecommunications service
9 providers on a competitively neutral basis, and enable the best use of the
10 Divisions' properties, and
11

12 WHEREAS the Master License Agreement is non-exclusive and has
13 an initial five-year term with 3 five-year renewal terms; and under the terms of
14 the agreement, telecommunications service providers shall be required to
15 pay a monthly fee based on the number of sites licensed and with an annual
16 escalation of the fee by 4.45 percent, and said agreement allows the
17 Divisions to seek reimbursement for costs to administer the proposed
18 agreement, and further sets forth the general terms and conditions, and
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21 WHEREAS additional terms and conditions with individual licensees
22 will be required to supplement the Master License Agreement terms and will
23 be set forth in the Site License Acknowledgment, and
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25 WHEREAS it is beneficial to approve the non-exclusive, five-year
26 (plus 3 five-year renewal terms) Master License Agreement and authorize the
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Light and Water Divisions to use and implement said agreement for all telecommunications service providers who desire to use the Divisions' properties for unmanned radio antenna sites, and copies of the agreement and explanatory memorandum are on file with the Clerk of the Board, and

WHEREAS it is in the best public interest to approve and authorize execution of the Master License Agreement; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the proposed Master License Agreement is approved and the proper officers of the City of Tacoma are authorized to execute, use and implement said agreement for all telecommunications service providers who desire to use the Light and Water Divisions' properties for unmanned radio antenna sites, and said agreement sets forth the general terms and conditions, including fees and costs to be paid to the Light and Water Divisions, provided that each individual licensee also shall execute a site specific Site License Acknowledgment with the Light or Water Division, as the case may be, and said agreement to be substantially in the same form as that on file with the Clerk and as approved by the City Attorney.

Approved as to form & legality:

Mark Bubenik
Chief Assistant City Attorney

Lydia Stevenson
Clerk

res/ml-agmt [062597]

Ross Singleton
Chairman

William J. Barker
Secretary

Adopted September 10, 1997

U-1288

Request for Board meeting

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES

of June 25, 1997

REQUEST FOR RESOLUTION

Date June 12, 1997

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Authorize approval of a Master License Agreement for telecommunication service providers.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

To authorize approval of a non-exclusive Master License Agreement. This Agreement will be offered to telecommunication service providers that request use of Light and Water Division properties to locate unmanned radio antennas and associated equipment. Under terms of the Agreement, telecommunication service providers will pay a monthly fee that is dependent on the number of sites licensed. In addition, the Agreement provides an annual escalation fee of 4.45 percent and allows the Divisions to seek reimbursement for costs to administer the proposed Agreement.

3. Summarized reason for resolution:

Passage of the 1996 Telecommunications Act in early 1996 and ongoing Federal Communications Commission bandwidth auctions have resulted in an increasing number of telecommunication service providers inquiring about use of Light and Water Division properties for unmanned radio antenna sites. The Agreement was developed because the Divisions' desire to facilitate community access to telecommunication services and enable the best use of their properties.

4. Attachments:

- a. Memo to Mark Crisson from Steven J. Klein and Kenneth J. Merry dated June 12, 1997
- b. Master License Agreement
- c.
- d.
- e.
- f.

5. Funds available Proposed action has no budgetary impact

6. Deviations requiring special waivers: None

Initiated by:

Geary Annfield
Section Head

Requested by:

Kenneth J. Merry & Steven J. Klein
Division Head

Approved:



Lydia Stevenson
Director of Utilities



MEMORANDUM

DATE: June 12, 1997

TO: Mark Crisson, Director of Utilities

FROM:  Steven J. Klein, Superintendent, Light Division
 Kenneth J. Merry, Superintendent, Water Division

SUBJECT: Master License Agreement for Telecommunication Service Providers

RECOMMENDATION: The Light and Water Divisions (Divisions) request Public Utility Board authorization to establish a Master License Agreement (MLA). The proposed MLA will govern the installation, maintenance, and operation of unmanned radio antennas and associated equipment (Communications Facility) located by telecommunication service providers (Telecom Service Providers) on the Divisions' properties.

BACKGROUND: Congress, in passing the 1996 Telecommunications Act, sought to increase growth and competition in the telecommunication industry through its further deregulation. Following Congressional action and ongoing Federal Communications Commission bandwidth auctions, an increasing number of Telecom Service Providers are inquiring about use of the Divisions' properties. Consequently in the spring of 1996, the Divisions opted to develop an agreement to facilitate community access to telecommunication services and enable the best use of the Divisions' properties.

On June 12, 1996, the Public Utility Board approved Resolution U-9191 authorizing the Divisions to enter into an agreement, a precursor to the proposed MLA, with Sprint Spectrum L.P. for use of the Divisions' properties.

The Divisions now wish to establish a single "master" license agreement to offer to Telecom Service Providers. Although the earlier Sprint agreement does not differ materially from the proposed MLA, it includes modifications that reflect both experience gained by staff through its administration of the Sprint agreement and comments provided by other interested Telecom Service Providers.

PROPOSED MLA:

Purpose

- The MLA is a non-exclusive agreement that governs the installation, maintenance, and operation of a Communications Facility located by a Telecom Service Provider on the Divisions' properties.

Use

- The type of sites potentially available to a Telecom Service Provider include transmission line towers, communication tower sites, substation sites, raw land, water stand pipes, and/or other Division buildings.

Mark Crisson
June 12, 1997
Page 2

- The proposed MLA establishes standards, including penalties, that cover a Telecom Service Provider's installation, maintenance, and operation of its Communications Facilities.
- The proposed MLA emphasizes the primacy of the Divisions' operations, local laws, and zoning.

Term

- The proposed MLA has an initial five-year term and three, five-year renewal terms.
- The proposed MLA grants each party termination rights, including allowing the Divisions to terminate an MLA and/or individual Site License Application (SLA) with 12 months' written notice.

Application and Reporting

- A Telecom Service Provider submits for each site an SLA to the Divisions for their review and approval. The SLA contains specific, detailed information and conditions for use of a particular site.

Fees

- Under the proposed MLA, a Telecom Service Provider will pay \$4,178 a month for the first five sites licensed. If more than five sites are licensed, the monthly fee for each additional site is \$836, subject to discounts that are dependent on the number of sites licensed (e.g., 6-10 sites, 20 percent discount; 11-15 sites, 30 percent discount). The MLA also provides for an annual escalation of the fee by 4.45 percent.
- The Divisions may seek reimbursement from a Telecom Service Provider for Division costs associated with administering the proposed MLA.

SUMMARY: Both Light and Water Divisions believe the proposed MLA is an appropriate instrument to provide access to their facilities, to generate income for the use of such facilities, and to facilitate community access to wireless communications services.

Currently, GTE, AT&T, and Western Wireless have expressed interest in executing the proposed MLA.

We request your approval to submit this matter to the Public Utility Board for their consideration.

APPROVED:



for Mark Crisson
Director of Utilities

CML:db (CML1.doc)

MASTER LICENSE AGREEMENT

Between

City of Tacoma
Department of Public Utilities

and

This Master License Agreement ("Agreement" or "MLA"), dated as of _____, 19__ is made by and between the City of Tacoma, Department of Public Utilities, a municipal corporation ("Licensor"), and _____, a _____ Corporation ("Licensee"). Licensor and Licensee may be referred to where appropriate individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS Licensor owns or has other legal rights to certain property including land, improvements to that land, and structures on that land.

WHEREAS Licensee wishes to obtain a non-exclusive license to certain portions of Licensor's property for purposes of locating unmanned radio and/or wireless communications and direct support equipment on such property.

WHEREAS in that the Licensor desires to facilitate community access to telecommunication services and enable best use of its properties, the Licensor opts to provide access to its properties for the purpose of attaching equipment in furtherance of lawful telecommunication services.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

1. MASTER LICENSE AGREEMENT

This Agreement contains the basic terms and conditions upon which a Site is licensed by Licensor to Licensee. When the parties agree on the particular terms for a Site, the parties will execute a Site License Acknowledgment (SLA) in the form attached as Exhibit A. Each executed SLA is agreed to be incorporated herein as a part of this Agreement. The terms and conditions of this Agreement shall govern and control except if there is a clear expressed inconsistency between the terms and conditions of any SLA and this Agreement, in which case the SLA shall be applicable. Licensee may record a memorandum of the SLA. Upon termination of the SLA for any reason, Licensee will record a notice of termination of the SLA if Licensee previously recorded a memorandum of the SLA.

2. TERM

a) TERM OF THE AGREEMENT

This Agreement will have an Initial Term of five (5) years commencing on the Execution Date of this Agreement. The term of this Agreement will be automatically renewed for three (3) additional Renewal Terms, unless either Party provides written notice to the other Party of its intention not to renew ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

b) TERM OF AN SLA

The term of an SLA shall begin on the Commencement Date and will terminate concurrent with this Agreement, unless otherwise terminated as provided in this Agreement. Licensee may enter the Site stated in the SLA before the Commencement Date, to the extent that such entry is related to engineering surveys, inspections or other reasonable necessary tests required prior to construction and installation of the Equipment subject to the conditions addressed in Section 11, "Access to the Site."

3. TERMINATION

a) LICENSEE

i) In addition to any other rights to terminate an SLA or this Agreement, Licensee shall have the right to terminate an SLA upon sixty (60) days prior written notice if Licensee is unable to use a Site for the Equipment in the manner originally intended by Licensee when executing the SLA.

ii) In addition to any other event of termination of an SLA or this Agreement, Licensee shall have the right to terminate an SLA upon thirty (30) days prior written notice upon the occurrence of any of the following:

- a) any certificate, permit, license or approval affecting Licensee's ability to use the Site in the manner originally intended by Licensee is rejected, or
- b) if any previously issued certificate, permit, license or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency.

b) LICENSOR

Notwithstanding any other provision in any SLA or this Agreement, Licensor shall have the right to terminate this Agreement and/or any or all SLAs upon twelve months prior written notice.

4. DEFINITIONS

When used with initial capitalization, the following terms shall have the meaning set forth below:

- a) Annual Fee: The sum of annual fees for all sites as calculated in accordance with the schedule set forth in the attached Exhibit B, and Section 18, "Fees."
- b) Acquiring Affiliate: Any person or entity that controls, is controlled by or under common control with Licensee.
- c) Commencement Date: The date an SLA was executed by both Parties.
- d) Environmental Hazards: means hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyl (PCB), petroleum or other fuels

(including crude oil or any fraction or derivative thereof) and underground storage tanks. The term "hazardous substances" shall be defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), and any regulations promulgated pursuant thereto. The term "pollutants" shall be as defined in the Clean Water Act, and any regulations promulgated pursuant thereto. The term "remediate" shall be defined as all actions necessary to satisfy the requirements of the Model Toxics Control Act (WAC 173-340) or CERCLA and any regulations promulgated pursuant thereto.

- e) **Equipment:** Unmanned radio and/or wireless communications and direct support equipment, necessary for transmission and receipt of radio/wireless communications between Licensee's sites or Sites. Equipment may include radio base and/or repeater stations, antennas, microwave dishes, towers, cables and equipment cabinets.
- f) **Execution Date:** The date the Agreement was executed by both Parties.
- g) **Force Majeure:** An event of Force Majeure means any act of nature or other event beyond the reasonable control of a party, such as, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control.
- h) **Initial Term:** The Initial term of this Agreement is (5) five years commencing on the Execution Date of this Agreement.
- i) **Instrument:** Is an underlying master license, easement, license, franchise, permit or other instrument of authorization or conveyance.
- j) **Property:** Land, improvements to land, structures on that land.
- k) **Renewal Term:** A Renewal Term equals (5) five years.
- l) **Site:** The specific portion of Licensor's property at each individual location licensed to Licensee.
- m) **Work:** Installation, maintenance, repair, relocation and/or removal of Equipment and other work performed in connection with this Agreement.

5. SITE LICENSE APPROVAL

- a) Licensee has the right at its sole cost and expense to erect, maintain, replace and operate at each Site only that Equipment specified on a SLA. Prior to commencing any installation, upgrade, and/or alteration of a Site, Licensee must obtain Licensor's prior written approval (or disapproval as the case may be) in the form of a new or revised SLA for the Site.
- b) Licensor will use reasonable efforts to notify Licensee of its approval or disapproval of a proposed SLA within twenty (20) business days after receipt of the proposed SLA by Licensor.
- c) In the event that Licensor gives its written consent to a proposed SLA, Licensee shall install the Equipment in strict accordance with:
 - i) The proposed SLA thereof,
 - ii) Any conditions or qualifications specified by Licensor in its consent, and
 - iii) The provisions of this Agreement, to the extent this Agreement is not inconsistent with the SLA.

6. SITE ACCEPTANCE

- a) Licensee will be deemed to have accepted the Site only at the time Licensee commences installation of the Equipment at the Site pursuant to the SLA approved by Licensor. Conducting feasibility and cost assessments and other inspections on the Site is not deemed to be acceptance.
- b) Acceptance of the Site by Licensee is conclusive evidence that Licensee:
 - i) accepts the Site as suitable for the purpose for which it is Licensed;
 - ii) accepts the Site and any structure on the Site and every part and appurtenance thereof AS IS, with all faults; and
 - iii) waives all claims against Licensor in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes, except:
 - a) as expressly provided otherwise in this Agreement;
 - b) to the extent the claim results from an intentional or willful act of Licensor, its employees, agents or contractors; or
 - c) if resulting from a known claim by a third party not identified by Licensor in its representations under this Agreement.

7. USE

Subject to the terms and conditions contained in this Agreement and the SLA relating to the Site, Licensor grants a non-exclusive license to Licensee and Licensee accepts a non-exclusive license from Licensor for the Site(s).

- a) A Site may be used by Licensee only for the installation, operation, upgrading, repair, maintenance and removal of the Equipment and related telecommunications activities as agreed in the SLA. Such installation, repair, operation, upgrading, maintenance and removal by Licensee at the Site shall be lawful and in compliance with all applicable laws, orders, ordinances and regulations of federal, state, and local authorities having jurisdiction.
- b) Licensee shall, at its sole cost and expense, install, maintain, remove, upgrade and operate at the Site only that Equipment specified on the applicable SLA. Licensee must install, operate and maintain the Equipment in a manner that does not interfere in any way with the operations on the Site of Licensor or any other users of the Site. Licensee shall not use or permit any use of a Site that will in any way:
 - i) conflict with any applicable law, statute, regulation, ordinance, rule, order or other requirement, now or hereafter in effect, of any governmental authority;
 - ii) cause or constitute any nuisance, noxious odors, unsafe condition, Environmental Hazards in or about the Site;
 - iii) interfere with the rights, operations, or disturb the quiet enjoyment of Licensor, other users of the Site, or any other person lawfully on the Site; or
 - iv) except as allowed in Section 26 b), "Insurance" cause a cancellation, increase the premiums for or deductible under or otherwise affect any fire, casualty, property, liability or other insurance covering the Site.

- c) The type of Sites potentially available to Licensee by Licensor include, but are not limited to transmission line towers, communication tower sites, substation sites, raw land, stand pipes, and buildings. Licensor may, at Licensor's option, perform installation, maintenance, and repairs of Licensee's Equipment at Licensor's transmission tower sites in coordination with Licensee at Licensee's sole cost and expense. Licensor has the right to define the level of reasonable coordination required for the installation, maintenance, and repairs of Licensee's Equipment at communication tower sites, substation sites, raw land, stand pipes, and buildings. Such coordination shall be defined within each SLA. Licensor will respond to Licensee's request regarding coordination of the installation of the Equipment within twenty (20) days after receiving Licensee's request.
- d) Any structural work on a structure on the Site, or any work involving a material alteration of any portion of the Site, must be designed by a licensed structural engineer licensed in the State of Washington. Final designs and all calculations must be submitted to the Licensor for final approval, which approval shall not be unreasonably withheld. The cost of all design and Licensor review fees shall be at the Licensee's sole cost and expense. For purposes of the foregoing, Licensee's subsequent changing out of Equipment previously installed at a Site with Equipment of substantially the same size in the course of repairs or upgrading the Equipment will not be deemed to be a material alteration.
- e) Licensee acknowledges that the License to use the Site is secondary to both power system operations, maintenance, and related activities, and water system operations, maintenance, and related activities which are the primary uses of the site.
- f) Licensor shall, at Licensee's expense, execute such appropriate documents and applications as may be required (i.e., by virtue of Licensor's ownership of or rights in the Site) by any governmental agency with jurisdiction in order for Licensee to obtain the necessary licenses, permits or other approvals from such governmental agency to use the Site as contemplated by this Agreement and the applicable SLA; provided, however, that Licensor shall not under any circumstances be obligated to execute any application or other document that, in Licensor's reasonable judgment, will in any way impair, limit or adversely affect Licensor's rights in or ownership or use of the Site or which creates an unjustifiable liability to Licensor.

8. MINIMUM STANDARDS FOR COMMUNICATION SITES

- a) The Licensor retains the right to visually inspect Licensee's equipment at any reasonable time to ensure compliance with Site standards presently in effect or as may be amended. This clause shall not be construed as a duty to inspect.
- b) Each transmitter and receiver at the site shall be identified with a copy of the Federal Communications Commission (FCC) license documentation, if applicable, SLA document number, name of person or service agency responsible for repairs, their 24-hour telephone number, and the equipment transmit and/or receive frequencies.

- c) All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products in accordance with the requirements of the Western Washington Cooperative Interference Committee (WWCIC) Engineering Standard #6 dated January 1997 or later. Additionally, transmitters in the 1950 to 1965 MHz range shall have at least 30 dB of isolation followed by either a low pass filter and a bandpass cavity with at least 45 dB of attenuation 1.0 MHz removed from the operating frequency or simply the bandpass cavity without the filter, provided that testing reveals that the low pass filter is not needed.
- d) General Engineering Standards shall be observed as follows:
- i) A bandpass cavity or crystal filter is recommended at the input of all receivers. Its purpose is to protect against RF energy "off frequency" from mixing in a non-linear device such as the first RF amplifier in a receiver, which can re-radiate causing interference.
 - ii) The band reject duplexer (cross notch duplexer) may not be used without a cavity/isolator outlined above.
 - iii) Single braid coax cable is prohibited. Double shielded cable must have over 98.5% shield coverage.
 - iv) Jacketed coaxial cable is required, unjacketed transmission line of any type is prohibited.
 - v) Use of "N," "TNC," or "DIN" or other types of constant impedance connectors is preferred over a non-constant impedance types. Every effort should be made to prevent the use of coax adapters.
 - vi) All equipment is to be grounded and shielded using the "Single Point Grounding" technique. Grounding is to be done with copper strap or heavy braid to a station ground grid. The "green wire" of the AC power plug is not an acceptable grounding point.
 - vii) Transmitting systems must be checked periodically, which includes the isolator, VSWR on the load port of the isolator and overall system insertion loss.
 - viii) Bare metallic ties are prohibited for securing transmission lines to towers. In the case of large lines, use of stainless steel or galvanized hangers is permitted. Hardware capable of rusting and dissimilar metals are prohibited. Transmission lines are to be insulated from metallic structures/objects. It is the duty of the installation personnel to prevent "diode junctions" from taking place.
 - ix) All loose wire or metal objects are to be removed from the tower and site. All new metal fencing associated with transmitter sites shall be plastic coated.
 - x) All equipment shall be licensed and operated in full accordance with all applicable rules and regulations of the regulating agency (FCC, NTIA). There shall be no modifications which violate "FCC Type Acceptance."
 - xi) It is recommended that all equipment be labeled with the owners name and a current 24-hour telephone contact number (service agency is acceptable).
 - xii) Every effort should be made to protect the equipment from lightning damage. Feed-through lightning protectors shall be used on all coaxial cable connections to equipment enclosures. Gas, gap and MOV protectors shall be used on control, audio, telephone and power connections.

e) Interference Policy Statement:

- i) In the event radio interference (RI) occurs all users of the Site are required to participate in solving the problem by providing technical personnel and test equipment to locate the source of the specific problem within a reasonable amount of time. The user(s) found to be causing the interference shall be responsible for resolving such interference at their sole expense. In the event that such interference resulting from users other than Licensee is not corrected within thirty (30) days, Licensee may terminate the SLA per Section 3. a), "Termination." Specifically as to Licensee, Licensee shall not use the Site in any way which interferes with the use by Licensor or any other tenant or Licensee. All equipment must be maintained in good working order and meet original manufacturers and FCC specification for reduction of transmitter spurious radiation.
- ii) Involved systems, not in full compliance with the standards, will be asked to comply immediately.
- iii) The standards listed are minimums found to be good engineering practices in the operation and maintenance of electronic sites.
- iv) An intermodulation study shall be performed by the Licensee, and a copy provided to the Licensor, for each transmitter added by the Licensee to a Site containing other transmitters or in the proximity of other transmitters. New transmitters shall be designed to avoid the potential for intermodulation interference.

9. ENVIRONMENTAL MATTERS

- a) Licensor represents and warrants that it will notify Licensee, to the best of its knowledge, of all material Environmental Hazards on each site that may adversely impact Licensee. Nothing in this Agreement or in any SLA will be construed or interpreted to require that Licensor or Licensee remediate any Environmental Hazards located at any Site unless Licensee or Licensee's officers, employees, agents, contractors, or actions placed the Environmental Hazards on the Site, or are otherwise legally responsible.
- b) Licensee will not bring, keep or transport any environmental hazards to, on or across any Site without Licensor's prior written approval which approval will not be unreasonably withheld, conditioned or delayed, except that Licensee may keep on the Site substances used in back up power units such as batteries and diesel generators commonly used in the wireless telecommunications industry. Licensee's use, storage, and handling of any approved substances constituting Environmental Hazards must comply with all applicable laws, ordinances, regulations, Licensor's requirements, and other provisions of this Agreement governing such use, storage, and handling. Under no circumstances will Licensee dispose of any Environmental Hazard on a Site. This provision shall survive termination of the Agreement and any particular SLA.

10. UTILITIES FOR THE SITE

- a) Licensee shall have the right, at its sole cost and expense, to obtain electrical and telephone service from any utility company that provides such service to the Site. Licensee may arrange for the installation of a separate meter and main breaker.
- b) The exact location of proposed utility routes and the manner of installation will be part of the SLA. If the route interferes with Licensor's current or potential future use of the Site, the Licensor may direct the installation to take a specific route and be conducted in a specific manner.
- c) Licensor understands and acknowledges that
 - i) to the best of its knowledge, the Site includes such non-exclusive easement rights as necessary to connect utility wires, cables, fibers and conduits to the Equipment, and
 - ii) Licensee shall pay for all of Licensee's utility charges and costs when due.
 - iii) Licensor may at its option provide utility power or communications to the Site at the request of the Licensee.

11. ACCESS TO THE SITE

- a) The following provision shall govern access to the Site by Licensee unless otherwise modified on the applicable SLA:
 - i) Access for construction, routine maintenance and repair and other non-emergency visits shall only be during business hours (defined as Monday through Friday, 7:00 a.m. to 7:00 p.m.) with twenty-four (24) hours advance notice to Licensor to arrange for an escort.
 - ii) In the event of emergency, as described by Licensee, Licensee may access the Site twenty-four (24) hours per day, seven (7) days per week, escorted by Licensor as arranged using the emergency phone number provided in Section 29, "Emergencies."
 - iii) Access to the Site may be by foot or motor vehicle.
 - iv) Access to the Site shall be subject to such additional conditions as may be imposed by Licensor from time to time which shall be in effect after twenty (20) days notice to Licensee.
 - v) Access to the Site is secondary to emergency power and water system operations and maintenance at the site.
- b) Licensee acknowledges that the foregoing access rights are subject to any limitations or restrictions on access imposed upon Licensor (and therefore upon Licensee) by the fee owner under any underlying License, easement, lease or license document relating to a particular Site. Licensee agrees to abide by any such limitations or restrictions.

12. PERFORMANCE OF THE WORK

- a) Except as otherwise agreed upon by the Parties in writing, Licensee shall furnish all personnel, supervision, labor, transportation, tools, Equipment and materials for performance of the Work. All Work will be undertaken at Licensee's sole cost and expense. Licensee shall expeditiously and efficiently perform the Work in accordance with the SLA and the provisions of this Agreement. Licensee shall not independently hire any employee of Licensor to perform any of the Work (e.g., other

than in the course of his or her employment with Licensor with respect to Work that Licensor agrees to perform for Licensee).

- b) Licensee shall perform the Work in a workmanlike and skillful manner and, (a) the Equipment will be safe and used in conformance with manufacturers' and installers' guidelines, (b) of first-class quality for Licensee's intended purpose, and (c) in conformance with such license requirements and specifications as Licensor shall from time to time reasonably prescribe after thirty (30) days notice and all applicable laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals with jurisdiction thereof pertaining to the construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code and Licensor's specifications.
- c) Licensee shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement. If Licensee fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, Licensor may, after ten (10) days notice to Licensee or sooner, upon Licensor's determination of an emergency, perform such Work and make such corrections and replacements in coordination with Licensee at Licensee's sole risk and expense and Licensee shall reimburse Licensor for the entire expense thereby incurred.
- d) Work must not adversely affect the structural integrity, maintenance of the Site or any structure or improvement on the Site and the resulting Equipment on the Site shall be reasonably inconspicuous.
- e) The Work is subject to preemption by Licensor due to Licensor's work to restore the operation of the power or water systems, however, such preemption shall occur only in an emergency situation, as determined by Licensor, and with reasonable notice to Licensee (within twenty-four (24) hours) of such emergency. Upon the occurrence of a preemption, the Annual Fee shall be abated on a prorated basis for the duration of the preemption, or Licensee may terminate the SLA upon fifteen (15) days notice to Licensor.
- f) Licensee shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. Licensee shall, if so requested by Licensor, remove from performance of the Work any personnel whom Licensor finds to be incompetent, careless or otherwise unsafe.
- g) Licensee hereby acknowledges that Licensor employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between Licensor and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Agreement, Licensee will cooperate with Licensor as is reasonable.
- h) Licensee shall, at all times, keep the Site reasonably cleared of all rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any

portion of any of the Work, Licensee shall promptly remove all rubbish, refuse, debris and surplus materials.

- i) The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to reasonable visual inspection by Licensor. No inspection, delay or failure to inspect, or failure to discover any defect or non-compliance by Licensor shall relieve Licensee of any of its obligations under this Agreement. Upon 24 hour prior notice to Licensee, Licensor may test the Licensee's Work and Equipment, excluding radio electronics and computer equipment that reasonably could be considered proprietary. Licensee may have a representative present at any testing of the Work and/or the Equipment.
- j) Licensee shall give immediate attention to, and shall use reasonable efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating Licensor in any way), all complaints received by Licensee from third Parties arising out of or in connection with performance of the Work. Licensee shall promptly notify Licensor of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, Licensee shall use its best efforts to maintain and promote good public relations for Licensor and Licensee.

13. COOPERATION AND COORDINATION

- a) Licensee acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by Licensor or others under contract with Licensor. Upon the occurrence of any interference, Licensee shall have the right to elect any of the remedies in Section 12. e), "Performance of Work." If Licensee does not terminate the SLA, Licensee shall fully cooperate and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.
- b) If any part of the Work depends upon the results of other work by Licensor or others, Licensee shall, prior to commencing the Work, notify Licensor in writing of any actual or apparent conflicts, deficiencies or defects in such other work that render it unsuitable for performance of the Work. Failure of Licensee to so notify Licensor shall constitute an acceptance by Licensee of such other work as suitable for performance of the Work.

14. PROTECTION OF PROPERTY AND PERSONS

- a) Licensee shall take all reasonable precautions which are necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, Licensee shall erect and maintain such barricades, signs, flags, flashers and other safeguards as are required by applicable law or regulations or as reasonably required from time to time by Licensor. Licensee shall reasonably inspect all goods, materials, tools, Equipment and other items in an attempt to discover any conditions which involve a risk of bodily injury (including death) to persons or a risk of damage to any property or the environment. In any event, Licensee is not guaranteeing discovery

of any such conditions or the prevention of any injury and is not responsible for any latent defects in the Equipment.

- b) All of Licensor's or third party's property damaged, altered or removed in connection with the performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by Licensee to at least as good quality and condition as existed prior to such damage, alteration or removal.

15. RISK OF LOSS

Licensee shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work, unless destruction of or damage to the Equipment is solely caused by an act of gross negligence solely related to Licensor's activities on the Site.

16. REPAIRS

a) LICENSEE'S OBLIGATION

- i) Licensee must, at all times during the term of any particular SLA, at Licensee's sole cost and expense, keep and maintain the Equipment located by Licensee upon the Site in a structurally safe and sound condition and in good repair.
- ii) If Licensee does not make such repairs within thirty (30) days after receipt of notice from Licensor requesting such repairs and such repairs are required, then Licensor may, at its option, make the repairs. Licensee upon receipt of satisfactory documentation shall pay Licensor on demand Licensor's actual costs in making the repairs, plus Licensor's actual overhead.
- iii) If Licensee commences to make repairs within thirty (30) days after any written notice from Licensor requesting such repairs and thereafter continuously and diligently pursues completion of such repair, then the thirty (30) day cure period will extend for an additional sixty (60) days to permit the Licensee to complete said repairs.
- iv) If emergency repairs are needed to protect persons, or property, or to allow the use of the Site, Licensee must immediately correct the safety or use problem, even if a full repair cannot be made at that time or Licensor may choose to make such repairs at Licensee's expense. Licensee shall obtain approval of the Licensor to access Site, in accordance with Section 11, "Access to Site," and make repairs and will coordinate with Licensor's emergency operations (pursuant to Section 11, "Access to Site") and maintenance activities.

b) LICENSOR'S OBLIGATION

- i) It is Licensor's intent, at all times during the term of any SLA and at Licensor's sole cost and expense, to keep and maintain the Site and any of Licensor's improvements located thereon in a structurally sound and safe condition. Provided, however, in the event that Licensor's facilities become structurally unsound, unsafe or fail, Licensor has no liability for monetary damages to Licensee or Licensee's employees, agents or contractors.
- ii) If Licensee is unable to use the Equipment because of repairs required on the Site or for any other reason not caused by the fault of Licensee, then Licensee

may immediately erect on the Site or an unused portion of the Site temporary Equipment, including any supporting structure, while Licensor makes repairs to the Site, provided that such temporary Equipment will be removed within fifteen (15) days of completion of repairs or replacement of the Site.

- iii) If Licensor after thirty (30) days prior notice to Licensee replaces any improvement on the Site that the Licensee has attached Equipment to, Licensee is solely responsible for the cost of the transfer of said Equipment to the new improvement.
- iv) If Licensor is required or requested to substantially relocate a Site and/or make related improvements by competent governmental or other entity with appropriate authority and Licensee has Equipment at said Site, Licensor shall provide Licensee reasonable notice prior to such relocation or making improvements and Licensee at its option may terminate the SLA under the provisions of Section 3. a) "Termination." In the event, Licensee does not terminate the SLA, Licensee is solely responsible for the cost of the relocation of said Equipment to the new location.

17. CASUALTY OR CONDEMNATION OF A SITE

- a) If there is a casualty to any structure upon which the Equipment is located, Licensor may elect to repair or restore the structure and, to the extent Licensee has the other necessary rights to do so, Licensee may immediately erect on the Site or a portion of the Site temporary Equipment while Licensor makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with Licensor's own restoration. Licensor will provide Licensee with reasonable notice of its plans to repair or restore a structure. Upon completion of such repair or restoration, Licensee will be entitled to immediately reinstall the Equipment. In the event such repairs or restoration will, in Licensor's reasonable estimation, require more than sixty (60) days to complete, Licensee will be entitled to terminate the applicable SLA upon thirty (30) days prior written notice.
- b) If there is a condemnation of the Site including, without limitation, a transfer of the Site by consensual deed in lieu of condemnation, then the SLA for the condemned Site will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Agreement. Licensee may pursue a separate condemnation award for the Equipment from the condemning authority provided that such award does not reduce the amount of Licensor's award.

18. FEES

a) ANNUAL FEE

i) First Year

- a) The first year annual fee for each Site shall be prorated to cover the period ending on the anniversary of the Agreement's Execution Date and beginning on the earlier of:
 - (1) thirty (30) days after the Commencement Date of the SLA or
 - (2) the date the Licensee commences installation of the Equipment on the Site.

- b) The Licensee will pay to Licensor the prorated annual fee (30) thirty days after the SLA's Commencement Date.
 - ii) Subsequent Years
 - a) In subsequent years; the annual fee for each Site will cover a period coincident with the anniversaries of the Agreement's Execution Date.
 - b) The Licensee will pay to the Licensor the Annual Fee on a prospective basis. The Annual Fee is due on or before the first day of the first month following the anniversary of the Agreement's Execution Date.
 - iii) Hold Over

The annual fee for each Site will continue past any termination of the SLA in accordance with the provision of Section 25 b) "Surrender of Site; Holding Over," and other applicable sections of this Agreement.
 - iv) Adjustment

The Annual Fee will be adjusted as provided in Exhibit B.
- b) OTHER FEES
- i) Licensee shall reimburse Licensor for any and all costs and expenses incurred by Licensor:
 - a) in connection with providing escorts at Site(s)
 - b) in connection with the processing and review of each proposed SLA.
 - c) in connection with Licensor's administration associated with existing SLAs or the Agreement.
 - d) in connection with services performed by Licensor at the request of Licensee (Whether prior to or after the submittal of a proposed SLA).
 - e) or as otherwise provided for in this Agreement.
 - ii) Without limiting the generality of the foregoing, amounts recoverable by Licensor hereunder shall consist of documented applicable engineering, inspection, construction, supervision, and/or administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service and other expenses.
 - iii) Licensee shall reimburse Licensor within thirty (30) days after submittal of a statement of such costs and expenses and supporting documentation.
- c) INTEREST
- If Licensee fails to pay when due, any Annual Fee, cost, and/or expense due to Licensor pursuant to this Agreement, then such amounts shall bear interest until paid at the rate of 1.5 percent per month.
- d) LATE FEE
- If Licensee fails to pay any Annual Fee, cost, and/or expenses due to Licensor pursuant to this Agreement within twenty (20) business days of when due, Licensor may require that Licensee pay to Licensor a late fee of \$150. The late fee is in addition to the interest Licensor may assess under Section 18, "Fees."
- e) CHANGES TO FEE SCHEDULE
- The Licensor specifically reserves the right to modify Exhibit B, Fee Schedule so as to account for changes in Licensor's accounting principals and policies, legal and/or regulatory changes, operation of Licensor's system, or any other reasons not delineated

herein. Licensor will provide Licensee 45-days prior notice of any proposed changes. Any modifications to Fees will be effective on the date of Licensor's execution of the revised Exhibit B.

19. PAYMENT OF FEES AND TAXES

Licensee is responsible for paying any and all additional fees and taxes, including but not limited to the Leasehold Excise Tax pursuant to Chapter 82.29A RCW (if applicable). Licensee shall have the right to appeal or contest at its sole expense (except as otherwise required by law) all personal property fees and taxes applicable to or incurred in connection with the Work, or the Equipment.

20. REIMBURSEMENT AND PAYMENT

Licensor shall invoice Licensee for all amounts payable by Licensee to Licensor under this Agreement (including, without limitation, the Annual Fees, costs and/or expenses described elsewhere in this Agreement) as they become due. Unless otherwise provided for in this Agreement, the Licensee shall pay each such invoice in full within thirty (30) days after Licensee's receipt thereof.

21. PAYMENT OBLIGATIONS

All payment obligations incurred under this Agreement shall be preserved until satisfied.

22. WARRANTS AND COVENANTS

- a) Each Party mutually represents and warrants to the other:
- i) that it has the full right, power and authority to enter into this Agreement and the SLA's;
 - ii) that entering into this Agreement and the performance thereof will not violate any laws, ordinances, restriction, covenants, or other agreements under which said Party is bound, provided, however, that the foregoing is subject to, and will not limit in any way, the rights of Licensor and the obligations of Licensee under Section 23, "Default and Remedies," and provided further that, to the extent the foregoing warranty is made by Licensor, such warranty will not apply to any violation or breach that is caused by Licensee's failure to obtain and comply with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement;
 - iii) that each of the persons executing this Agreement on behalf of each Party represents and warrants that said Party is a duly organized and existing legal entity;
 - iv) that the Party is qualified to do business in Washington State or will be qualified prior to undertaking any activities at the Site that would require the Party to be qualified to do business in such state; and
 - v) that the persons signing on behalf of the corporation or limited partnership were authorized to do so.
 - vi) that Licensee will be solely responsible for payment of any fees associated with any dealings with any real estate brokers or agents on Licensee's behalf in connection with the negotiation of this Agreement.

- b) Licensee represents and warrants:
 - i) that it is, and at all times during the Initial Term or Renewal Terms shall be, properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and Licensee's system of which the Equipment is a part; and
 - ii) that it shall be, and operate as, an independent entity (not a contractor, agent or representative of Licensor) in the performance of the Work and the operation of the Equipment and Licensee's system. In no event shall Licensee be authorized to enter into any agreements or undertakings for or on behalf of Licensor or to act as or be an agent or representative of Licensor.

- c) Licensor represents and warrants,
 - i) to the best of its knowledge, that it owns good and marketable fee simple title, has a good and marketable leasehold interest, or has a valid license, easement or other legal right of use, in the land on which the Site is located and has rights of access thereto. Licensee has the ultimate responsibility to obtain all necessary authority for Licensee's use of each specific Site.
 - ii) Licensor does not warrant the suitability of any particular Site for the purposes for which Licensee may desire to use it; nor does Licensor warrant the adequacy of any Site's location, its condition, the condition of any structure or appurtenances for any purpose. Licensee takes each Site "AS IS", "WHERE IS" and "WITH ALL FAULTS".
 - iii) Except as specifically set forth in this Section and Sections 9, "Environmental Matters" and 33, "Quiet Enjoyment," Licensor makes no warranties, express or implied, including, without limitation, any warranties of habitability or fitness for a particular purpose with regard to any Site.

23. DEFAULT AND REMEDIES

a) LICENSEE EVENTS OF DEFAULT

The occurrence of any one or more of the following events constitutes an "event of default" by Licensee under the applicable SLA and this Agreement:

- i) if Licensee fails to pay after thirty (30) days notice from Licensor, the full amount of any fee or other payment under the applicable SLA or this Agreement, including terms and conditions applicable thereto contained in the Agreement;
- ii) if any Equipment placed on the Site by Licensee unreasonably interferes with any equipment located on the Site and Licensee:
 - a) fails to immediately cease operation of said Equipment, and
 - b) fails to resolve the interference within thirty (30) days.
- iii) if Licensee fails to perform or observe any other term of the applicable SLA, including terms and conditions applicable thereto contained in this Agreement, and such failure continues for more than thirty (30) days after written notice from Licensor; except such thirty (30) day cure period will be extended as reasonably necessary to permit Licensee to complete cure so long as Licensee commences cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure;
- iv) if Licensee deserts, abandons, or vacates any portion of a Site and fails to maintain any and all Equipment remaining at the Site;

- v) if any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee, such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee is adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof;
- vi) if a receiver, custodian, or trustee is appointed for Licensee or for any of the assets of Licensee and such appointment is not vacated within sixty (60) days of the date of the appointment; or
- vii) if Licensee becomes insolvent or makes a transfer in fraud of creditors.

b) LICENSEE'S DEFAULT

- i) If an event of default occurs pursuant to Section 23. a) "Default and Remedies," while Licensee remains in default, Licensor (without notice or demand except as expressly required above) may terminate the applicable SLA and all of Licensee's rights to the site, in which event Licensee will, within thirty (30) days of such termination, immediately surrender the applicable Site to Licensor. Licensee will become liable for damages equal to the total of:
 - a) the actual costs of recovering the Site;
 - b) the Annual Fee earned as of the date of termination, plus interest thereon, as specified in Section 18 f) "Fees" from the date due until paid;
 - c) all other sums of money and damages, if any, owing by Licensee to Licensor.
- ii) If at any time during this Agreement any of the events set forth in Section 23 a) "Default and Remedies" have previously occurred affecting three or more SLAs, Licensor, at its sole option, is entitled to terminate this Agreement upon thirty (30) days prior written notice to Licensee. Licensor may elect any one or more of the foregoing remedies with respect to any particular SLA.

c) LICENSOR'S DEFAULT

If Licensor defaults in the performance of any of its obligations with respect to any particular SLA or this Agreement, which default

- i) continues for a period of more than thirty (30) days after receipt of written notice from Licensee specifying such default, or
- ii) is of a nature to require more than thirty (30) days for remedy and continues beyond such time reasonably necessary to cure (and Licensor has not undertaken procedures to cure the default within such thirty (30) day period and diligently and continuously thereafter pursued such efforts to complete cure),

then Licensee may, as its sole and exclusive remedy, upon written notice terminate the applicable SLA. Provided, however, Licensor is potentially liable for its sole negligence for personal injuries as set forth in Section 27, "Indemnification and Limitation of Liability."

24. DISPUTE RESOLUTION

- a) Except as provided otherwise in this Agreement, any controversy between the Parties arising out of this Agreement or any SLA, or breach thereof, is subject to the mediation process described below. If not resolved by mediation, then the matter must be submitted to the American Arbitration Association ("AAA") for arbitration before a sole arbitrator in the City of Tacoma.
- b) A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. The meeting will be attended by individuals with decision making authority regarding the dispute. If within thirty (30) days after such meeting the Parties have not succeeded in resolving the dispute, they will within thirty (30) days submit the dispute to a mutually acceptable third-party mediator who is experienced in dispute resolution. The Parties will participate in good faith in the mediation and the mediation process. The mediation shall be nonbinding. If the dispute is not resolved by mediation either Party may initiate an arbitration with the AAA, and the dispute shall be resolved by binding arbitration under the rules and administration of the AAA, provided, however, discovery shall be allowed to the same extent as allowed by Civil Rules for Superior Courts of Washington. Judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof. Neither Party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.
- c) The costs of mediation and arbitration, including any mediator's fees; AAA administration fee, the arbitrators fee, and costs for the use of facilities during the hearings, shall be borne equally by both Parties. Reasonable attorneys' fees may be awarded to the prevailing Party at the discretion of the arbitrator. Each Party's other costs and expenses will be borne by the Party incurring them.

25. SURRENDER OF SITE; HOLDING OVER

- a) Upon the expiration or other termination of an SLA for any cause whatsoever, Licensee shall peacefully vacate the applicable Site in as good order and condition as the same were at the beginning of the applicable SLA, except for reasonable use, wear and tear and casualty at no fault of Licensee and condemnation. Licensee has the absolute right to remove its Equipment within thirty (30) days after notice of termination. Licensee will repair any damage caused during the removal of the Equipment, normal wear and tear excepted.
- b) If Licensee continues to hold any Site after the termination of the applicable SLA, whether the termination occurs by lapse of time or otherwise, such holding over will, unless otherwise agreed to by Licensor in writing, constitute and be construed as a month-to-month tenancy at a monthly License Fee equal to 1/12th of 200% of the annual fee for such SLA and subject to all of the other terms set forth in this Agreement. Licensor shall still have the option to require Licensee's removal of all Equipment upon giving ten (10) days written (second) notice of termination of said month-to-month tenancy. If not so removed, at Licensor's option the Equipment shall become the property of the Licensor. Licensor may chose to remove said Equipment and charge Licensee for all costs related to such removal.

26. INSURANCE

a) REQUIRED INSURANCE OF LICENSEE

- i) Licensee shall, during the term of this Agreement and at its sole expense, obtain and keep in force, not less than the following insurance:
 - a) Property insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon each Equipment in an amount not less than ninety percent (90%) of the full replacement cost of the Equipment;
 - b) Commercial General Liability insuring operations hazard, personal injury, independent contractor hazard, contractual liability, and products and completed operations liability, in limits not less than \$5,000,000 combined single limit for each occurrence for bodily injury, personal injury and property damage. The specific coverage limit may be satisfied through a combination of primary and excess liability insurance,
 - c) Worker's Compensation and Employer's Liability insurance; and
 - d) Surety Bond. Licensee shall provide a surety bond, in an amount sufficient to fulfill the obligations as set forth herein including removal of Equipment located at each Site. The amount of the surety bond shall be determined by the Licensor.
- ii) All insurance policies required of Licensee must be taken out with reputable national insurers that are licensed to do business in the State of Washington, or in the case of a Licensee who is proposing to self insure, Licensee shall provide Licensor with annual financial statements that are audited by a reputable accounting firm, which statements must reflect sufficient unencumbered reserves equivalent to the required insurance amounts. Licensee agrees that certificates of insurance will be delivered to Licensor as soon as practicable after the placing of the required insurance, but not later than the Commencement Date of a particular SLA. All policies must name Licensor as an additional insured and contain an undertaking by the insurers to notify Licensor in writing not less than thirty (30) days before any material change, reduction in coverage, cancellation, or termination of the insurance.
- iii) Licensor may review the limits for the insurance policies required by this Agreement on an annual basis. Policy limits shall be adjusted to proper and reasonable limits as circumstances warrant as determined by Licensor, but policy limits shall not be reduced below those stated above.

b) COMPLIANCE

- i) Licensee will not do or permit to be done in or about the Site, nor bring or keep or permit to be brought to the Site, anything that:
 - a) is prohibited by any insurance policy carried by Licensor covering the Site, any improvements thereon, or the Site; or
 - b) will increase the existing premiums for any such policy beyond that contemplated for the addition of the Equipment.
- ii) Licensor acknowledges and agrees that the installation of the Equipment upon the Site in accordance with the terms and conditions of this Agreement will be

considered within the underwriting requirements of any of Licensor's insurers and such premiums contemplate the addition of the Equipment.

27. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a) To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor, its officers and employees, from any and all claims for damages or loss to the Licensor's operations or property and from any and all claims or litigation. This includes damages, loss, and personal injury (including death) to property or persons including injuries or death to Licensee, or Licensee's agents, contractors, or employees which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Agreement associated with the property granted hereunder, or caused or occasioned by an act, deed, or omission of the Licensee, Licensee's agents, employees, guests, customers, or invitees. In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws. The Licensor agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

- b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LICENSOR SHALL NOT HAVE ANY LIABILITY TO LICENSEE FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF LICENSEE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITES, OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE.

28. ASSIGNMENT

a) BY LICENSEE

- i) Licensee shall not assign or sublease this Agreement or any portion of its rights in this Agreement, except as follows:
 - a) to Acquiring Affiliate. Licensee must provide written notice to Licensor. The Acquiring Affiliate must certify to Licensor in writing (and provides such documents as may be reasonably requested by Licensor to establish) that the Acquiring Affiliate (a) is assuming all of the obligation of Licensee under this Agreement, and (b) is ready, willing and able to comply with all of the provisions of this Agreement; and provided further that Licensee furnishes to Licensor such information regarding the Equipment affected by such assignment or transfer, if any, as may reasonably be requested by Licensor;
 - b) to Licensee's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by Licensee, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of Licensee under this Agreement; or

c) to any other person or entity except with the prior written consent of Licensor, which consent shall not be unreasonably withheld. In any event, no assignment or sublease, or otherwise, of this Agreement shall relieve Licensee from any of its liabilities or obligations under this Agreement. Following any assignment which is approved by Licensor, Licensee shall be relieved of all future performance liability and obligations under this Agreement. Subject to the foregoing restrictions on assignments without the prior written consent of Licensor, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

ii) Notwithstanding the provisions *supra*, Licensee is expressly enjoined from permitting or licensing any person or entity to place equipment on the Site that is not an integral part of Licensee's Equipment.

b) BY LICENSOR

Licensor may make any sale, license, use or transfer of any Site, provided such sale, license, use or transfer is subject to the terms and conditions of this Agreement and the applicable SLA.

29. EMERGENCIES

a) In the event of an emergency relating to the Equipment, Licensee shall immediately contact Licensor at the emergency phone number below and take immediate action to correct any safety or use problems, including but not limited to the actions in Section 16 b), "Repairs," even if the full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

Licensor: (253) 502-8602

Licensee: _____

b) Each Party shall promptly notify the other of any change in such Party's emergency phone number.

30. SUBORDINATION AND LIENS

a) SUBORDINATION

i) Licensee agrees that this Agreement and each SLA is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against Licensor's interest or estate therein, and any underlying license or master license on a particular Site, all without the necessity of having further instruments executed by Licensee to effect such subordination but with respect to any such liens, leases and licenses arising subsequent to the execution of this Agreement only if trustees or mortgagees will not disturb Licensee under this Agreement and the SLAs.

ii) Each SLA is subject to any restrictions or other terms or conditions contained in the instrument with respect to a particular Site. Licensee may request

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copies of any and all applicable Instruments subject to reasonable compensation. Licensee agrees to commit no act or omission which would constitute a violation of the terms and conditions of any Instrument for a particular Site.

- a) Licensor shall not be required to obtain any consent required under any Instrument from the landlord or other party to such Instrument for purposes of this Agreement, unless expressly set forth in the SLA.
- b) If a restriction contained in an Instrument for a particular Site and not set forth on the applicable SLA prevents Licensee from installing, maintaining or operating the Equipment or accessing the Site, Licensee will be entitled to terminate the affected SLA immediately.
- c) Upon the termination or expiration of any Instrument with respect to a particular Site the SLA relating to such Site shall automatically terminate without further liability to either Party. Licensee acknowledges that some of Licensor's underlying Instruments may grant to the property owner the right to terminate such Instruments, and that in the event of such termination, the SLA with respect to such Site shall terminate concurrently therewith.
- d) Upon any sale or other transfer of all or any portion of a Site, the applicable SLA will automatically terminate except to the extent the purchaser or transferee and Licensee enter into an agreement for Licensee's continued use of the Site and release Licensor from any further obligation or liability with respect to the Site. Licensor shall have no obligation to request or obtain such agreement from the purchaser or transferee.
- e) Licensor will not materially breach the terms or conditions of any deed, lease, or permit with respect to a particular Site in a manner that causes Licensee to lose its use of the Site.

b) LIENS

- i) Licensor's Property is not subject to being foreclosed upon by Licensee's lenders, creditors, contractors or materialmen. Therefore, Licensee must keep all Sites free from any liens arising from any Work performed, materials furnished, or obligations incurred by or at the request of the Licensee. Licensee retains the right to use the Equipment as collateral in financial transactions to the extent that Licensor's rights and interests are not affected. However, all financing agreements are subject to the provisions of this Agreement.
- ii) Licensee must pay on demand any amount paid by Licensor for the discharge or satisfaction of any lien, and all reasonable attorney's fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all reasonable disbursements in connection therewith.

31. COMPLIANCE WITH LAWS

- a) In the performance of the Work and this Agreement, Licensee shall comply and shall ensure that all contractors hired by or acting on behalf of Licensee comply with all applicable:
 - i) Laws, ordinances, rules, regulations, orders, licenses, permits, franchises and other requirements, now or hereafter in effect, of any governmental authority;

- ii) Industry standards and codes; and
- iii) Licensor's standard practices, specifications, rules and regulations which will be provided by Licensor to Licensee on request.

b) Licensee shall obtain and comply (and shall ensure that all of Licensee's suppliers and subcontractors under contract with it or acting on behalf of it comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement.

c) Licensee shall furnish to Licensor such documents that it may reasonably require to effect or evidence compliance. All laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference. Compliance with Section 31, "Compliance With Laws" shall be the sole responsibility of Licensee and a continuing condition of the use of the Sites by Licensee.

32. FORCE MAJEURE

If a Party is delayed or hindered in, or prevented from performance required under this Agreement by reason of Force Majeure (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Agreement) such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

33. QUIET ENJOYMENT

Licensor, to the extent of its legal rights and interest to any Site, covenants and warrants that Licensee or its assigns or transferees approved by Licensor, upon payment of the Annual Fees and performance of all the terms, covenants and conditions under this Agreement, will have, hold and enjoy each Site licensed under an SLA during the term of the applicable SLA or any renewal or extension thereof. Licensor will take no action not expressly permitted under the terms of this Agreement that will interfere with Licensee's intended use of a Site.

34. SEVERALTY

The invalidity or unenforceability of any provision of this Agreement or any SLA shall not affect the other provisions hereof, and this Agreement or SLA shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

35. SURVIVAL

All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

36. BINDING EFFECT

This Agreement and each SLA will be binding on and inure to the benefit of the respective parties' successors and permitted assignees.

37. NON-WAIVER

- a) The failure of either Party to insist upon or enforce strict performance by the other Party of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.
- b) The Parties acknowledge and agree that they have been represented by counsel and each of the Parties has participated in the drafting of this Agreement and each SLA. Accordingly, it is the intention and agreement of the Parties that the language, terms and conditions of this Agreement and each SLA are not to be construed in any way against or in favor of any Party hereto by reason of the responsibilities in connection with the preparation of this Agreement or each SLA.

38. HEADINGS

The headings of sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or the SLA.

39. NOTICES AND OTHER COMMUNICATIONS

- a) Any formal notice, request, approval, consent, instruction, direction or other communication given by either Licensor or Licensee to the other pursuant to this Agreement shall be in writing and shall be delivered by both facsimile transmission and
 - i) 1) first class mail, return receipt requested or
 - ii) 2) by reputable overnight courier service to the individuals denoted below, unless otherwise directed in writing, at the address and fax number provided:

For the Licensor : Title: Superintendent, Light Division Address: Tacoma Public Utilities Post Office Box 11007 Tacoma, WA. 98411-0007 Fax No: (253) 502-8378	For Licensee: Title: _____ Address: _____ _____ _____ Fax No.: _____
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- b) Informal notices such as billings, technical or routine business communications may be by facsimile with original being mailed. Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this Section. Notice deemed received one (1) business day following deposit with reliable courier, or three (3) business days following first class mailing.

40. TIMELY RESPONSE

Each Party shall take such prompt action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation of continuing performance of this Agreement.

41. EXAMINATION OF RECORDS

Licensee shall promptly furnish Licensor with such information reasonably related to the Work or the Equipment as may from time to time be reasonably requested by Licensor.

42. APPLICABLE LAW

The agreement shall be construed under the laws of the State of Washington. The venue for any legal action commenced to enforce any provision of this agreement shall be Pierce County.

43. ENTIRE AGREEMENT

This Agreement and each SLA constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement or any SLA must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF TACOMA,
DEPARTMENT OF PUBLIC UTILITIES

BY: _____
Steven J. Klein
Superintendent, Light Division
Date: _____

Approved as to form & legality:

Assistant City Attorney
Date: _____

LICENSEE

BY: _____
Title: _____
Date: _____

SLA No. _____

Exhibit A
Site License Acknowledgment

Master License Agreement

City of Tacoma
Department of Public Utilities

This Site License Acknowledgment ("SLA") is made to the Master License Agreement this _____, day of _____, 19 __ by the City of Tacoma, Department of Public Utilities and _____. Capitalized terms used in this SLA have the same meaning as such terms in the Master License Agreement unless otherwise indicated.

1. Site Name and Number:

2. Site Address:

3. Site Legal Description:

4. The Site is:

- Owned by Licensor
- Leased by Licensor (copy attached)
- Used under easement to Licensor (copy attached)

5. FCC License Number _____ (Attach Copy)
Date Issued _____

6. General Description of Facility Licensed: (e.g. 20' of space beginning at 100' elevation of existing 140' communications tower.)

7. Antenna Physical Description: (e.g. array of 6 ea. mast antennas, vertically oriented, with steel mounting structure extending approx. 10' from existing lattice tower, at elevation _____.)

8. Electronic Cabinet Physical Description: (e.g. 3 ea. cabinets, 3'Wx3'Dx6'H each, elevated from the ground on wooden platform and posts, with power entrance conduits and communications cable conduits.)

9. Transmitter Description:

Manufacturer: _____

Model: _____

Frequency _____

Bandwidth _____

Power(ERP) _____

10. Utility services:

Power provided by: _____

Telecommunications Landline provided by: _____

11. Intermodulation Study Completed and Approved,

Licensor Approval (initials) _____

Date _____

12. Drawings Received by Licensor

Equipment Layout and Detail: Received (initials): _____ Date: _____

Antenna Attachment Detail: Received (initials): _____ Date: _____

Site Plans and Elevations: Received (initials): _____ Date: _____

13. Structural Integrity Study

Received _____ or waived _____ by Licensor (initials) _____

Date _____

14. Site Access Details and Provisions:

15. Plan for Minimizing Visual Impact of Equipment at Site:

16. Construction work requested of Licensor by Licensee:

17. Coordination Provisions between Licensor and Licensee (please refer to Section 7. C), "Use" and Section 13, "Cooperation and Coordination" of the MLA):

18. Additional Provisions:

CITY OF TACOMA,
DEPARTMENT OF PUBLIC UTILITIES,
LIGHT DIVISION

NAME: _____

Approved as to form & legality:

DATE: _____

Assistant City Attorney

Date _____

LICENSEE

BY: _____

TITLE: _____

NAME: _____

DATE: _____

Exhibit B
Fee Schedule

Master License Agreement

City of Tacoma
Department of Public Utilities

This Fee Schedule is made apart of the Master License Agreement this _____ day of _____, 19 ____ by the City of Tacoma, Department of Public Utilities. Capitalized terms used in this Fee Schedule have the same meaning as such terms in the Master License Agreement ("MLA") unless otherwise indicated.

1. Fee

The fee for each Site licensed under the MLA shall be \$836 per month payable in accordance with Section 18, "Fees" of the MLA.

2. Annual Adjustment

Commencing the first anniversary of the execution of this agreement, and on the same day of each year thereafter during the term of this Agreement, and any extensions thereof, monthly fees for all Sites for which SLA's have been executed, and for which SLA's are thereafter executed, shall be increased by the greater of 4.45% or inflation as defined by the Consumers Price Index (CPI-U) for All Urban Consumers U.S. City Average, measured year over year, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor.

) Effective Date - 9/16/97