

After recording return document to:

City of Mount Vernon  
P.O. Box 809  
Mount Vernon, WA 98273-0809

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

NOV 19 2013

Amount Paid \$  
Skagit Co. Treasurer  
By *[Signature]* Deputy



201311190077

Skagit County Auditor \$97.00  
11/19/2013 Page 1 of 26 10:42AM

**SITE LEASE AGREEMENT**

THIS SITE LEASE AGREEMENT (the "Agreement") is entered into this 23 day of September 2013 ("Date of Agreement") by and between the City of Mount Vernon ("City") whose address is PO Box 809, Mount Vernon, WA 98273 and Swinomish Indian Tribal Community, a Federally recognized Indian Tribe ("Tribe" or "Lessee"), pursuant to Title 18 of the Mount Vernon Municipal Code ("MVMC"). References to the Lessee shall include Lessee's agents, officers, employees, successors and assigns, unless otherwise noted; references to the City shall likewise include the City's elected and appointed officials, agents, officers, employees, successors and assigns, unless otherwise noted. The City and Tribe are individually referred as a "Party" in this Site Lease and collectively referred to as the "Parties".

WHEREAS, City is the owner of approximately 315 acres of land primary devoted for public recreational uses known as Little Mountain Park including building(s) and telecommunications towers as more particularly described in Exhibit A attached hereto and made a part hereof by this reference ("Property"); and P29652  
33-34-04

WHEREAS, City and Lessee desire to enter into an Agreement to lease certain portions of the Property therein described located at 3000 Little Mountain Road, Mount Vernon, Washington 98273; and

WHEREAS, the Lessee is a Tribal government that operates a public safety agency; and

WHEREAS, City and Lessee, in their mutual interest, desire to establish the Agreement as set forth below accordingly,

WHEREFORE, City and Lessee agree as follows:

**LEASE**

1. Nonexclusive lease. This lease is nonexclusive with respect to the City and does not preclude the City from granting a similar lease, right, license, franchise, etc., to other carriers or other persons for telecommunications or any other purpose, subject to the interference provisions set forth in paragraph 8 hereof. The Site whereupon Lessee's

*[Signature]*  
*[Signature]*

equipment is placed, as described in paragraph 2 below and in Exhibit "B," shall be for the exclusive use by Lessee with regard to third parties. The City shall not grant any lease, rights, license, franchise, etc., to other carriers or other persons for any purpose for use of the Site described in Exhibit "B."

2. Permitted Use. The location on City's Property that Lessee is occupying shall be referred to as the "Site", and is more particularly described in Exhibit "B" attached hereto and made a part hereof by this reference.

- A. Lessee shall have the right, at its expense, to install, and maintain on the Site communication facilities including cable and support mount connections to and from the Public Safety Tower, radio and other communication transmitting and receiving antennas, support mounts, cables, equipment, equipment storage structures and other improvements relating thereto (collectively the "Communication Facilities") for the provision of wireless communications service. Lessee shall have the right to repair, modify, supplement, replace, upgrade, relocate or remove the Communication Facilities at any time during the term of the lease so long as said replacement or upgrade is made for the purpose of improving the operation of its Communication Facilities, provided that Lessee provides notice in advance of the commencement of Lessee's activities in accordance with the provisions of paragraph 14. Lessee's construction work shall comply with all applicable City construction codes and standards, and shall be completed in accordance with those provisions set forth in Exhibit "C," attached hereto and incorporated herein. Lessee shall have the right to contract with a third-party to install, maintain, repair, modify, supplement, replace, upgrade, relocate or remove the Communications Facilities; *provided, however,* that such contract(s) shall not alter the material terms of this lease.
- B. Lessee shall be entitled to reasonable access to the property twenty-four [24] hours a day, seven [7] days per week, and shall have all additional rights of ingress and egress to and from the property, provided however, except in the case of an emergency, Lessee shall notify City in advance of Lessee's proposed construction, maintenance or repair activities to be performed on the Site in order to coordinate said activities with City's operations.
- C. Lessee shall pay any incremental additional utility charges to the Property incurred as a result of Lessee's Permitted Use. Lessee shall have the right, at its expense, to install or improve utilities within or on the Property to service installed equipment to allow Lessee to operate or improve the operation of its communications. All installation of utilities shall be subject to consent of the City which shall not unreasonably be withheld.



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3. Term. This Lease shall be for a term of ten years ("Lease Term") from the Effective Date. The "Effective Date" shall be the date on which the City issues a building permit for the installation of the facilities; Provided, however, that the Lessee shall not begin construction activities on the property until such time as this lease is in full force and effect. The lease provisions contained in paragraphs 1 - 49 of this Agreement shall become effective upon the Effective Date.

4. Renewal. Unless City gives written notice to Lessee that a renewal application will be required, such notice being received by Lessee at least ninety [90] days prior to the end of this lease's then relevant term, renewal for three [3] additional five [5] year terms will be deemed to have occurred automatically without action by either Party, provided that all renewal terms shall be subject to the termination provisions of paragraph 27.

5. Renewal Application. Renewal applications, if required by the City pursuant to the provisions of paragraph 4 above, shall include the following information:

- A. The identity of the Applicant;
- B. A description of any additional Telecommunications Facilities or other equipment proposed to be located upon City Property, together with a description of the City Property upon which the Applicant proposes to locate the additional Telecommunications Facilities or other equipment;
- C. Any information required pursuant to the Facilities Lease agreement between the City and Lessee; and
- D. All deposits or charges required pursuant to Chapter 18.06 of the MVMC.

6. Renewal Determination. In addition to the renewals provided for in paragraph 4, the City is under no obligation to grant a renewal of this lease or approve any renewal application for the use of City property if requested under paragraph 4 and 5

7. Compensation.

- A. The lessee will pay the costs to construct an ice bridge as designed in exhibit D attached hereto from the eastern tower to the public safety building. The purpose of this bridge will be to carry the coax from the public safety building to the eastern tower where the antenna will be mounted. In recognition of the costs to construct the ice bridge, rent will be waived for a period of ten years from the effective date of this lease. After ten (10) years the rent shall be \$2,000 per year. The Ice Bridge is estimated to cost \$15,000 including installation and Washington State Sales Tax, and Lessee is not obligated under this Agreement to expend more than \$15,000, including installation and Washington State Sales Tax, toward the cost of the ice bridge. After execution of the Agreement by the Parties, Lessee shall pay a sum of fifteen thousand dollars (\$15,000.00) to the City in return for the City's construction



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of the Ice Bridge. Payment shall be tendered within 30 days of the execution of this Agreement and shall be non-refundable unless this Agreement is terminated pursuant to Section 10(A) of this Agreement. All interests to the Ice Bridge shall be owned by the City. The rent of \$2,000 will increase 6% at the beginning of each five (5) year lease term beginning after the expiration of the initial ten-year term.

- B. Payment of rent shall be made payable to and sent to City's address as first set forth above. City shall send Lessee an invoice or other statement setting out the rental amount owed at least thirty [30] days prior to the due date of the rental payment.
- C. Lessee shall pay, as additional rent, any increase in real property taxes levied against the Site, which are directly attributable to Lessee's use and improvement of the Site, and City agrees to furnish proof of such increase to Lessee.
- D. Any payments received more than thirty [30] days after the due date shall be subject to a late payment penalty of 2% of the annual rental fee for each day or part thereof the payment is delinquent, provided that the City shall provide notice that such payment is past due prior to the institution of such late penalties. Such notice may be provided by first class mail or by facsimile, addressed as set forth in paragraph 46.

8. Interference.

- A. Lessee agrees not to operate equipment which interferes with new or existing City owned and operated equipment on the property and further agrees that Lessee shall not, nor shall an agent of Lessee, tamper with, adjust, change, or remove adjoining telecommunications equipment or antennas; provided, however, that such modifications may be made to eliminate interference with Lessee's operations if made at Lessee's sole expense and with the prior approval of the owner of such equipment or facilities. Lessee hereby warrants and agrees that it will not install or operate equipment or perform this Agreement in any manner that interferes with existing equipment or operations by other lessees currently occupying the site through existing agreements or the renewal of existing agreements with the City.
- B. Lessee further agrees not to broadcast on or use any frequencies, other than those for which Lessee has permission from the Federal Communications Commission as of the date of this lease. Use of any other frequencies shall be permissible only upon the express prior written consent of City, which shall not be unreasonably withheld. It is agreed and understood that this provision is specifically negotiated to allow City to plan for and use other frequencies than those currently assigned by the



Federal Communications Commission to Lessee without fear of interference at this time or in the future.

- C. Lessee's utilization of the Site will comply with construction and site management standards as set forth in the Washington State Department of Natural Resources Minimum Standards for Communications Sites and construction standards attached hereto as Exhibit "C".
- D. The Parties recognize and agree that emergency service providers shall have priority use of the site and facilities. The Parties agree that in the event of any dispute between the parties, this Lease shall be interpreted so as to give effect to this priority.
- E. Lessee shall cooperate with all other tenants to identify the causes of and work towards the resolution of any electronic interference. In addition, Lessee agrees to eliminate any radio or television interference proven to be caused to City-owned facilities or surrounding residences by Lessee's facilities at Lessee's own expense and without installation of extra filters on City-owned equipment. The costs of engineering studies associated with radio or television interference complaints shall be borne equally by the parties. Lessee further agrees to accept such interference as may be received from City operated telecommunications facilities located upon the City property subject to this lease.
- F. The City expressly disclaims any warranty express or implied that any existing or future uses by the City or agreement and usage by third parties of the site shall not interfere with Lessee telecommunication operations or facilities. Upon request, the City shall provide Lessee any information it possess subject to public disclosure in accordance with state and federal law to assist Lessee in determining whether current operations and facilities would interfere with Lessee's proposed use. In the event City elects to permit a third party to use any of City's Property for the purpose of installing Communications Facilities, City may upon request seek to ascertain whether or not such use will interfere with Lessee's operations at the Site, and thirty (30) days prior to the issuance of such authority, deliver to Lessee engineering studies or other appropriate evidence regarding whether such use will interfere with Lessee's operations at the Site. Should Lessee determine, based on such materials or on its own studies, that the third party will interfere with Lessee's operations it may terminate this agreement upon written notification.
- G. In the event of interference with Lessee's facilities, promptly upon the identification of such interference and attribution to City or another tenant, the City shall use reasonable efforts to identify whether: 1) modifications of its operations or facilities, 2) modifications of operations or facilities with another tenant in accordance with its agreement with that tenant, or 3)



modifications with Lessee's operations of facilities may eliminate such interference in a manner agreeable to all parties. If elimination of such interference cannot be resolved, Lessee's remedy against City shall be limited to termination of the lease as provided herein. This provision shall be subject to the provisions of subsection D, E, and F above. In no event shall Lessee be entitled to consequential or extraordinary damages.

9. Ownership and Removal of Improvements. All buildings, towers, landscaping, and all other improvements, except telecommunications equipment unless abandoned, shall become the property of the City upon expiration or termination of this lease, provided all cure periods have expired. In the event that the City requires removal of such improvements upon expiration or earlier termination of this lease, such removal shall be accomplished at Lessee's sole expense and shall be completed within sixty [60] days after receiving notice from the City requiring removal of the improvements. Notice may be sent by the City within sixty (60) days prior to such Lease expiration or early termination. In the event that telecommunications facilities or other equipment are left upon City property after expiration or termination of the lease, they shall become the property of the City if not removed and claimed by Lessee upon 120 [120] days after written notice from the City. In the event Lessee fails to remove any improvement after sixty days notice, the City may elect to remove such improvement at the sole cost to Lessee.

10. Cancellation by Lessee.

- A. This lease is contingent upon Lessee obtaining all necessary permits, approvals, and licenses for the proposed facility. In the event that Lessee is unable to obtain all such permits, approvals, and licenses, it may cancel this lease and obtain a pro rata refund in any rents paid, without further obligation, by giving thirty [30] days written notice to the City.
- B. In the event that Lessee obtains all necessary permits, approvals, and licenses for the proposed facilities and thereafter determines that the property is unsuitable for any reason, Lessee shall have the right to cancel the lease upon sixty [60] days written notice to the City. However, no prepaid rent shall be refunded.
- C. This Agreement may be terminated by a non-defaulting Party if the other Party defaults and fails to cure such default within sixty [60] days after written notice of such default is provided to the defaulting Party by the non-defaulting Party; provided that if such default is capable of being cured, this Lease may not be terminated by the non-defaulting Party so long as the defaulting Party commences appropriate curative action within such sixty [60] day period and thereafter promptly and diligently prosecutes such cure to completion.



11. Police Power. In accepting this lease, Lessee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and Lessee agrees to comply with all applicable and enforceable general laws enacted by the City pursuant to such power.

12. Rules and Regulations by the City. In addition to the inherent powers of the City to regulate and control any lease it issues, the authority granted to it by the Cable Act, the Telecommunications Act of 1996, other state and federal laws, and those powers expressly reserved by the City, or agreed to and provided for in this lease, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers. Except as provided by City ordinance, the foregoing does not allow for amendment by the City of material terms of this lease without the consent of Lessee. The City reserves the right to delegate its authority for administering this lease to a designated agent, provided that such delegation shall not alter the material terms of this lease.

13. Damage to Property. Subject to the provisions of paragraph 8, neither Party nor any person acting on such Party's behalf shall take any action or permit any action to be done which may impair or damage any property, public ways of the other Party, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto.

14. Notice of Work. Unless otherwise provided in this lease, neither Lessee nor anyone acting on Lessee's behalf shall commence any non-emergency work in or about the public ways of the City, other ways, or upon City's property without two [2] working days advance notice to the City, provided that, notwithstanding the foregoing, Lessee shall endeavor to provide City with as much advance notice prior to engaging in non-emergency work on the property of City as may be practical so as to avoid conflicts between construction activities and the usual activities of the City. Subject to paragraph 15, Lessee shall obtain any necessary permits prior to commencing any such work.

15. Repair and Emergency Work. In the event of an unexpected repair or emergency, Lessee may commence such repair and emergency response work as required under the circumstances, provided that Lessee shall notify the City as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

16. Maintenance of Facility. Lessee shall maintain its facility in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.

17. Relocation or Removal of Facility. Within ninety (90) days following written notice from the City, Lessee shall temporarily or permanently remove, relocate, change or alter the position of its facility whenever the City's Public Works Director shall have determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance or installation of any public improvement in or



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upon the public ways or City property by the City, or another governmental entity. If the request is by the City as a result of a project that will serve the general public, such relocation shall be at the expense of the Lessee; otherwise, such relocation shall be at the expense of the entity requesting removal. The parties may subsequently agree to alter this provision if City is able to provide a satisfactory alternative site, and provided further that the City shall be under no obligation to identify or secure an alternative site.

18. Removal of Unauthorized Facilities. Within sixty [60] days following written notice from the City, Lessee shall, at its own expense, remove its unauthorized facilities or appurtenances. A facility is unauthorized and subject to removal in the following circumstances:

- A. Upon expiration or termination of this lease and a sixty [60] day written notice to remove.
- B. Upon abandonment of the facility. Any property of Lessee's shall be deemed abandoned and the property of the City if left in place or not claimed by Lessee within one hundred and twenty [120] days after sixty day notice to remove.
- C. If the system or facility was constructed or installed without the prior grant of this lease.
- D. If the system or facility was constructed or installed without the prior issuance of a required Construction Permit.
- E. If the system or facility was constructed or installed at a location not permitted by this lease.

Notwithstanding the foregoing, the City may, in its sole discretion, allow Lessee to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of Lessee's facilities must first be approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of such persons in place, the property shall become that of the City, and such persons shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. The provisions of this paragraph shall survive the expiration, revocation, or termination of this lease.

19. Emergency Removal or Relocation of Facility. The City retains the right and privilege to cut or move any cable or telecommunications facilities located within the public ways of the City and upon City property, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to Lessee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's



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actions under this provision, provided that Lessee shall be provided such reasonable notice as circumstances allow.

20. Damage to Facility. Unless directly and proximately caused by the wrongful acts or negligence of the City, the City shall not be liable for any damage to or loss of the telecommunications facility upon City property or within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City; *provided, however* that nothing in this paragraph releases any person or entity that has contracted with the City from liability for its own actions or failure to act.

21. Restoration of City Property.

- A. When Lessee or any person acting on Lessee's behalf does any work in or affecting City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise approved by the City.
- B. If weather or other conditions do not permit the complete restoration required by this Section, Lessee shall temporarily restore the affected property. Such temporary restoration shall be at Lessee's sole expense and Lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. Lessee shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.
- D. The City shall be responsible for inspection and final approval of the condition of the public ways, other ways, and City property following any construction and restoration activities therein, provided that such approval shall not be unreasonably withheld. The provisions of this paragraph shall survive the expiration, revocation, or termination of this lease.

22. Environmental Matters.

- A. Lessee will be solely responsible for and will defend, indemnify and hold City, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the property associated with the Lessee's use of Hazardous Materials.



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- B. City will be solely responsible for and will defend, indemnify, and hold Lessee, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup, or restoration of the property associated with the City's use of Hazardous Materials.
- C. "Hazardous Materials" means asbestos or any hazardous substance, waste or materials as defined in any federal, state, or local environmental or safety law or regulation including, but not limited to, CERCLA, RCRA and WADOE.
- D. The obligations of this section shall survive the expiration or other termination of this Agreement.

23. Insurance.

- A. Lessee shall procure and maintain for the duration of the Agreement, insurance as set forth below against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Lessee, its agents, representatives or employees. The City shall be named as an additional insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage. Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee before commencement of any work or installation of any facilities pursuant to this Agreement..
  - 1. Commercial general liability insurance, written on an occurrence basis, with limits not less than:
    - a. \$1,000,000.00 for bodily injury or death to each person;
    - b. \$1,000,000.00 for property damage resulting from any one accident; and
    - c. \$1,000,000.00 for all other types of liability.
  - 2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 for each person and \$1,000,000.00 for each accident;
  - 3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;
  - 4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$1,000,000.00.



*[Handwritten initials]*

B. The above coverages may be provided, in part, through an umbrella policy, with the approval of the City.

C. The insurance policy (ies) obtained by Lessee shall name the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers, as additional insureds with regard to activities performed by or on behalf of Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, agents, employees, representatives, engineers, consultants or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of Lessee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after written notice by certified mail, return receipt requested, has been given to the City in accordance with the terms of the policy. The insurance certificate shall contain language evidencing these requirements.

D. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

#### 24. Indemnification.

A. Lessee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by Lessee's own employees to which Lessee might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property of which the negligent acts or omissions of Lessee, its agents, servants, officers or employees in performing the activities authorized by this Lease are the proximate cause. Lessee further releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to any person including claims by Lessee's own employees, including those claims to which Lessee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way, or other public properties, that may be utilized in performing the activities authorized by this Lease, by virtue of Lessee's exercise of the rights granted herein, or



by virtue of the City's permitting Lessee's use of the City's public ways or other public property, or based upon the City's inspection or lack of inspection of work performed by Lessee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Lease or pursuant to any other permit or approval issued in connection with this Lease. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of Lessee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public way or other public place in performance of work or services permitted under this Lease. In the event that Lessee's transmission technology or facilities emit electromagnetic impulses (EMF), Lessee expressly agrees that this indemnity provision extends to any and all claims for injury, sickness or death of any person, including employees of Lessee, arising out of or caused by said emissions.

- B. City hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the Lessee, its officers, employees, and agents from any and all claims, costs, judgments, awards or liability to any person, including claims by City's own employees, to which City might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property of which the negligent acts or omissions of City, its agents, servants, or officers are the proximate cause.
- C. Inspection or acceptance by the City of any work performed by Lessee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation; *provided, however*, that this sentence is applicable only if Lessee has been given prompt written notice by the City of any such claim, a reasonable opportunity to defend any such claim, and a reasonable opportunity to review all evidence and to review and approve the terms of any such compromise of any such claim.
- D. In the event that Lessee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined in proceedings conducted pursuant to and in accordance with Paragraph 30 of this Agreement, to have been a wrongful refusal on the part of Lessee, then Lessee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.



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- E. The provisions of this Section shall survive the expiration, revocation, or termination of this Lease.

25. Chattel Lien. To secure the payment of all rent due and to become due hereunder and the faithful performance of this Lease by Lessee and to secure all other indebtedness and liabilities of Lessee to the City now existing but hereafter incurred, Lessee hereby gives to City an express first and prior contract lien and security interest on all property which may be placed in the leased premises.

26. Assignments or Transfers of Grant. This lease shall run with the property and shall be binding on and inure to the benefit of the Parties, their respective successors, personal representatives and assigns. Lessee may assign its interest in the Lease upon satisfaction of the following terms:

- A. Assignment may be made upon City's written consent, which shall not be unreasonably withheld, to any person or entity holding a valid tariff issued and or/adopted by the Washington State Utilities and Transportation Commission;
- B. Lessee may assign or sublet without the City's prior written consent to any party controlling, controlled by or under common control with Lessee or to any party which acquires substantially all of the assets of Lessee.
- C. Upon the effective date of the assignment, and subject to the assignee's assumption of all of the Lessee's pre-existing obligations and responsibilities, Lessee shall be relieved of all further obligations and liabilities under this Agreement.

27. Revocation, Forfeiture, and Termination. The rights granted under this Lease may be revoked or forfeited as provided in MVMC Section 18.10.230 as said Section presently exists or is hereafter amended; Provided, however, that the City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order in proceedings conducted pursuant to and in accordance with Paragraph 31 of this Agreement compelling Lessee to comply with the provisions of this Lease and to recover damages and costs incurred by the City by reason of Lessee's failure to comply. The City may, without assigning any reason therefor, terminate this Lease after the first lease term at any time upon six [6] months prior notice to Lessee.

28. Notice of Entry on Private Property. If directed by the City, at least twenty-four [24] hours prior to entering private property, or streets or public easements adjacent to or on such private property, to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by Lessee. A door hanger may be used to comply with the notice and posting requirements of this Section. Lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on



location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices; Provided, however, that nothing in this lease shall permit Lessee to unlawfully enter or construct improvements upon the property or premises of another.

29. Safety requirements. Lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the lease area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right, which right shall not be construed as an obligation, to see that Lessee's system is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with Lessee, establish a reasonable time for Lessee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from Lessee.

30. Hazardous Substances. The City represents that it has no actual knowledge of any substance, chemical or waste (collectively, "substance") on the site that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee shall not introduce or use any such substance on the site in violation of any applicable law.

31. Dispute Resolution.

- A. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Washington State and any applicable Federal law.
- B. Arbitration. Any controversy, claim or dispute concerning the making, formation, validity, obligations under or breach of this Agreement and issues related to the existence, interpretation and enforceability of the arbitration provisions of this Agreement, shall be subject to mandatory arbitration conducted by a single arbitrator in either Skagit or King County, Washington, whichever is most efficient for the parties and the arbitrator. There shall be no discovery other than the exchange of information which is provided to the arbitrator by the parties, except as ordered by the arbitrator to promote equality and further justice. Subject to the provisions of this Paragraph 31, the arbitrator shall have the authority to award compensatory damages and shall not have authority to award punitive or other non-compensatory damages and the parties hereby waive all rights to and claims for monetary awards other than compensatory damages, but the City reserves the right to pursue any equitable remedy. Additionally,



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the arbitrator shall award costs and expenses, including reasonable attorney's fees, to the prevailing Party.

- 1 Arbitration under this section shall be governed by the Washington Uniform Arbitration Act, RCW 7.04A; provided, however, that the consolidation provisions in RCW 70.04A.100, and punitive damages provisions in RCW 7.04A.210(1),(5) are not applicable to any arbitration under this section, and that the remaining provisions in RCW 7.04A.210 are subject to Subparagraph 31(D) of this Agreement.
- 2 A competent arbitrator shall be chosen by agreement of the Parties. If the Parties are unable to agree on an arbitrator within thirty (30) calendar days of a Party demanding arbitration, either Party may request that a judge of the Superior Court appoint an arbitrator. Each Party shall initially pay one-half the arbitrator's fee but the substantially prevailing party shall be awarded its share of such fees, in addition to its reasonable attorneys' fees, costs and expenses.
- 3 The Parties may jointly agree to stay mandatory arbitration proceedings pending voluntary mediation of the controversy, claim or dispute before a mediator jointly chosen by the Parties.

C Compelling, Enforcing, Reviewing, Modifying and Confirming Arbitration. The Parties agree that pursuant to Subparagraph 31(B) of this Agreement and in accordance with RCW 7.04A the Superior Court shall have the authority to compel or enforce arbitration and to review, modify or confirm an arbitration award. In the event that any such judicial proceedings are initiated, the prevailing party shall be entitled to its attorney's fees and costs incurred in compelling arbitration or confirming an arbitration award.

D Waiver of Sovereign Immunity. Except as expressly provided in this Subparagraph 31(D), nothing in this Agreement is intended to be or shall constitute or shall be construed as a waiver, limitation or modification of the sovereign immunity of the Swinomish Indian Tribal Community to unconsented suit. The Tribe hereby waives its sovereign immunity only with regard to arbitration proceedings or proceedings in the Superior Court described in this Paragraph 31 "Dispute Resolution". This waiver is applicable solely to claims by City and its successor in interest, and not by any other person, corporation, partnership or entity whatsoever. This waiver does not extend to proceedings in any other forum or regarding any other matter.



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32. Business Purpose. All supporting structures, buildings, or facilities shall, to the extent technology and space permits, be available for joint use by existing or future users of the site, including the City. The City shall have the authority to permit the same without compensation to Lessee. Said use shall not prevent Lessee from using its equipment, nor cause interference with Lessee's transmission and signals. The City will endeavor to provide Lessee with thirty [30] days notice of a new joint user.

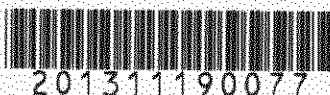
Lessee shall conduct and carry on in the Facilities only the business for which the Facilities are leased, and shall not use the Facilities for any additional or illegal purposes. Lessee agrees that no stock of goods will be carried or anything done in or about the Facilities which will increase the present rate of insurance.

33. Licenses, Fees, and Taxes. Prior to constructing any improvements upon the Facilities, Lessee or, if work is performed by a contractor, its contractor shall obtain a business license from the City pursuant to MVMC Chapter 5.04. Further, Lessee shall pay promptly, and before they become delinquent, all applicable taxes on all merchandise, personal property and improvements owned or placed by Lessee on the Facilities; shall pay all applicable license fees and public utility charges related to the conduct of Lessee's business on the Facilities; shall pay for all applicable permits, licenses and zoning approvals relating to the conduct of business on the Facilities by Lessee; all applicable leasehold tax; and shall pay any applicable tax, including utility taxes and business license fees imposed by the City.

34. Incorporation of MVMC Chapter 12.16. MVMC Chapter 12.16, as it now exists or may hereafter be amended, is hereby incorporated in full by this reference. In the event any provision of this Lease conflict with the provisions of MVMC Chapter 12.16, the provisions of this Lease shall prevail.

35. Holdover. At such time as this Lease expires, or is revoked or terminated for any cause, Lessee shall immediately remove its equipment and personal property from the premises. If Lessee shall, with the written consent of the City, holdover after the expiration of the term of this Lease, the holdover tenancy shall be for a period of time on a month to month basis, which tenancy may be terminated by the provision of thirty [30] days advance written notice by the Party seeking termination of the tenancy to the other Party. During such tenancy, Lessee agrees to pay the City the annual rate of rental, prorated on a monthly basis, and further agrees to be bound by all of the terms, covenants, agreements and conditions as herein specified, so far as applicable.

36. Fire and Other Casualty. City will provide reasonable notice to Lessee of any casualty affecting the Property. In the event the Facilities are destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable by Lessee in whole or in a substantial part, in Lessee's sole determination, Lessee shall have the option to terminate the lease immediately without further liability or obligation to the City. No prepaid rent shall be refundable.



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37. Condemnation. In the event City receives notification of any condemnation proceedings affecting the Property, City will provide notice of the proceeding to Lessee within forty-eight (48) hours. In the event of the taking of the Facilities by condemnation or otherwise by any governmental, state or local authority, sufficient, in Lessee's sole determination, to render the premises unsuitable for Lessee, this Lease shall be deemed canceled as of the date the title vests in the condemning authority. Lessee shall have no claim to nor shall it be entitled to any portion of any condemnation award for damages to the Facilities awarded to the City. Lessee may otherwise pursue any remedy allowed by law.

38. Signs. All signs or symbols placed on the Facilities by Lessee shall be subject to the prior approval of the City. In the event Lessee shall place signs or symbols on the Facilities where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such signs or symbols, and the refusal of Lessee to comply with such demand within a period of forty-eight [48] hours will constitute a breach of this Lease, thereby entitling the City to exercise any available legal remedy and to remove the sign or symbol. Any signs placed upon the Facilities shall be so placed upon the understanding and agreement that Lessee will remove the same at the termination of this Lease and repair any resulting damage or injury to the Facilities. If such signs are not so removed upon termination by Lessee, then the City may have the same removed at Lessee's expense.

39. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, agreement or option, or any other covenant, agreement or option.

40. Cancellation of Prior Leases and Agreements. This Lease supersedes all previous leases and agreements, whether verbal or in writing or otherwise, between the parties concerning the property. All prior leases are hereby canceled.

41. Reimbursement of City Expenses. Lessee shall be subject to all applicable permit fees associated with activities undertaken through the authority granted in this Lease or under the laws of the City.

In addition to the above, Lessee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency caused by Lessee's telecommunications facilities.

Finally, Lessee shall reimburse the City upon submittal by the City of an itemized billing by project of costs, for Lessee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as the result of the construction of Lessee's facilities.

  
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Such costs and expenses shall include but not be limited to Lessee's proportionate cost of City personnel assigned to oversee or engage in any work as the result of the presence of Lessee's facility on City-owned property. Such costs and expenses shall also include Lessee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Lessee's facilities or the routing or rerouting of any utilities so as not to interfere with Lessee's facilities.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis, but the City shall provide Lessee with the City's itemization of costs at the conclusion of each project for information purposes.

42. Non-Severability. The provisions of paragraphs 2, 7, 8, 13, 16, 22, 23, 27, 31, and 33 are each an integral part of the consideration given by each Party and as such, such terms and conditions are not severable. If any of the paragraphs identified in this paragraph should be held to be invalid or unconstitutional by a court of competent jurisdiction, this Lease shall terminate unless suitable replacement terms can be agreed to by the parties.

43. Merger. This Lease constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Lease. This Agreement supercedes all previous offers, negotiations, and agreements with respect to the property that is the subject matter of this agreement. There are no representations or understandings not set forth herein. Any amendment to this Agreement must be set forth in writing, and executed by the parties.

44. Dangerous Conditions, Authority for City to Abate. Whenever Lessee's construction, installation, or excavation of telecommunications facilities authorized by this Lease has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct Lessee, at the Lessee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and public ways. Such action may include compliance within a prescribed time.

In the event that Lessee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Lessee shall be liable to the City for the costs thereof. The



A handwritten signature in black ink, appearing to be 'JB', written over a horizontal line.

provisions of this paragraph shall survive the expiration, revocation, or termination by other means of this Lease.

45. Brokers. Either Party hereto that is represented in this transaction by a broker, agent or commission salesperson (a "Representative") shall be fully and exclusively responsible for the payment of any fee, commission or other compensation owing to such Representative, and shall indemnify and hold the other Party harmless from and against any claim to a fee, commission or other compensation asserted by such Representative, including reasonable attorneys' fees and costs incurred in defending such claim.

46. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, or mailed by certified mail, return receipt requested, to the following addresses:

If to City:  
Attn: Mike Voss  
Mount Vernon Fire Department  
1901 N LaVenture Road  
Mount Vernon, WA 98273

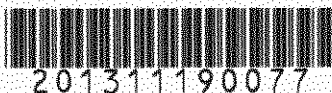
with a copy to:  
City Attorney  
City of Mount Vernon  
PO Box 809  
Mount Vernon, WA 98273-0809

If to Lessee:

Attn: Chairman  
Swinomish Indian Tribal Community  
11404 Moorage Way  
La Conner, WA 98257

with a copy to:  
Office of the Tribal Attorney  
Swinomish Indian Tribal Community  
11404 Moorage Way  
La Conner, WA 98257

47. Representations and Warranties. Each Party represents and warrants to the other Party that (i) it has full right, power, and authority to execute this Agreement and has the power to grant all rights hereunder; (ii) its execution and performance of this Agreement will not violate and laws, ordinances, covenants, tariffs, or the provisions of any mortgage, lease, or other agreement binding on said Party; and (iii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been



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duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or to the Party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.


48. By executing this Agreement, the parties are not establishing a joint undertaking, joint venture, or partnership. Each Party will be deemed to be an independent entity acting solely for its own account.

49. Either Party may record the original or a true copy of this Agreement with the Skagit County Auditor. Each Party shall reasonably cooperate with the other Party to implement this provision.

The parties have entered into this Agreement as of the date first stated above.

CITY:

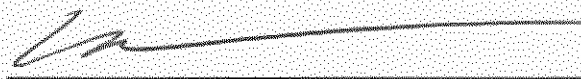
City of Mount Vernon

  
\_\_\_\_\_  
Mayor Jill Boudreau

ATTEST:

  
\_\_\_\_\_  
Alicia D. Huschka, Finance Director/City Clerk

Approved as to form:

  
\_\_\_\_\_  
Kevin Rogerson, City Attorney

LESSEE:

Swinomish Indian Tribal Community

By:   
\_\_\_\_\_  
M. Brian Cladoosby  
Chair, Swinomish Indian Senate

Date: 5-7-13



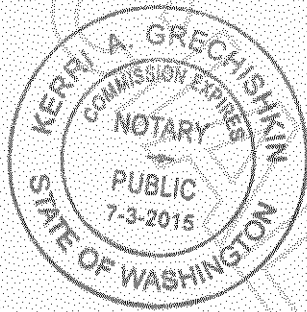
  
\_\_\_\_\_  
BC

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Jill Boudreau is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the mayor of the City of Mount Vernon, Washington to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: 10/16/13

(SEAL or Stamp)



Keri A. Grechishkin  
(Signature)

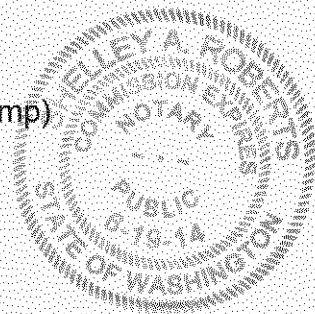
Notary Public  
(Title)  
My appointment expires: 7/3/15

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF Skagit )

I certify that I know or have satisfactory evidence that M. Brian Cladoosby is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Chairman of the Swinomish Indian Senate, Swinomish Indian Tribal Community, to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: 5-7-13

(SEAL or Stamp)



Melley A. Roberts  
(Signature)

Notary Public  
(Title)  
My appointment expires: 6-19-14



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**EXHIBIT A**

Approximately 315 acres which consists of the majority of Little Mountain Park identified by Skagit County Assessor's as Parcel No. P29652 including improvements such as Public Safety Building and a Public Safety Telecommunication Tower identified in the photo attached hereto. The abbreviated legal description is as follows:

NE1/4 NE1/4 EXC RD-NW1/4 NE1/4 EXC RD- SW1/4 NE1/4-SE1/4 NE1/4-NE1/4  
NW1/4-NW 1/4 NW1/4-SW1/4 NW1/4-SE1/4 NW1/4 EXC TAX 7 LESS RT#1-001-02 03  
04 05

Situate in Skagit County, WA.



  
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Exhibit A

Public Safety Building Located at Little Mountain Park  
Radio to be located in Law-Rack 1 in space indicated in Exhibit B



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**EXHIBIT B**

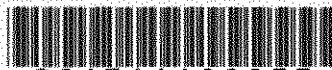
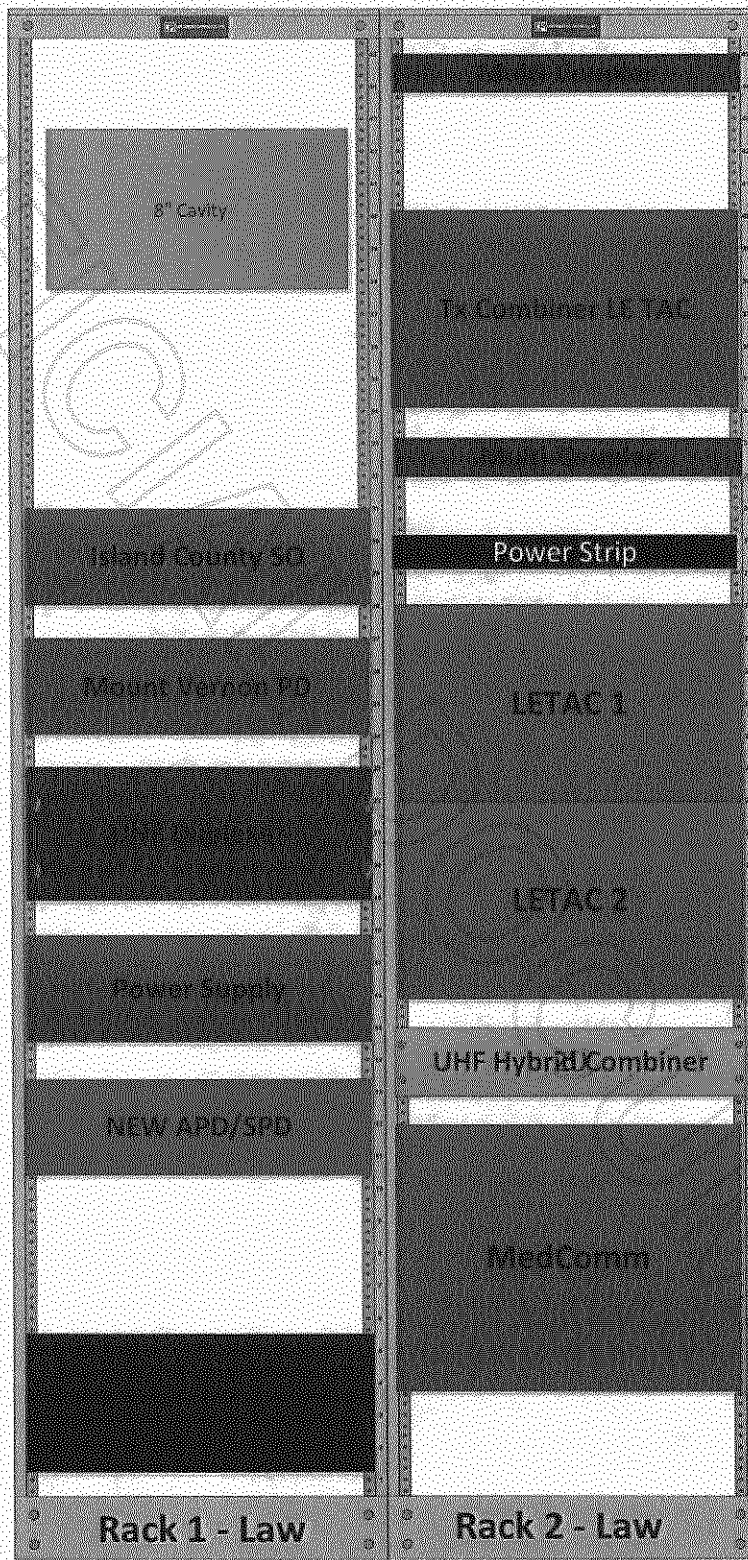
**Site Depiction**

Lessee shall have space on port 4 on the transmit combiner and port 4 on the receiver multi-coupler to allow sharing antennas located on the City's Public Safety Tower with multiple users.

Lessee shall be provided rack space in the Public Safety Building identified in the photo attached to Exhibit "A" incorporated herein to install operate and maintain Communication Facilities. Space shall be allowed in Rack One identified as "NEW APD/SPD" within the sketch attached to Exhibit "B" incorporated herein to place transmitter and duplexer equipment.



# Exhibit B



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**EXHIBIT C**

**CONSTRUCTION STANDARDS**

1. No trenches shall be cut in any driving surface (including, but not limited to, asphalt or concrete paved surfaces) for the installation or maintenance of cables or conduit runs. To the extent feasible, the Lessee shall install such cables and conduits in areas alongside paved surfaces so as to minimize the number of cables and conduit beneath paved surfaces. All such cables and conduit runs that must be installed beneath such driving surfaces shall be installed through boring, or such other construction methods so as not to disturb the driving surface. No boring shall be done under the parking lots without prior approval by the City. Utility space under the parking lots will require a separate lease and additional rents.
2. The gravel pads to be installed shall be bordered by treated lumber, to contain the gravel.
3. All trenches shall be finished by leveling, the installation of ground landscaping fabric, and the installation of course beauty bark. Underground cable and conduit locations shall be permanently marked and/or noted. Such marking and/or noting shall be accomplished by permanent markers installed on site, indicating the location of the buried facilities, or by noting the existence of such facilities with the one-call utility location service. In either event, as-built drawings showing the location of any buried cables or facilities shall be provided to the City.



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