



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 20, 2018

Ordinance 18658

Proposed No. 2017-0491.1

Sponsors Upthegrove

1 AN ORDINANCE authorizing the county executive to sign
2 a twenty-five year lease agreement enabling the Puget
3 Sound Emergency Radio Network project to occupy and
4 use the city of Kent's Cambridge site.

5 **STATEMENT OF FACTS:**

6 For the lease from the city of Kent, located at 3300 South 264th Street,
7 Kent, Washington, in council district five, the Puget Sound Emergency
8 Radio Network project, with the oversight of the county's facilities
9 management division, has determined that there is not an appropriate
10 county-owned option, and has successfully negotiated a lease with the city
11 of Kent that will enable the Puget Sound Emergency Radio Network
12 project to use the Cambridge site.

13 **BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

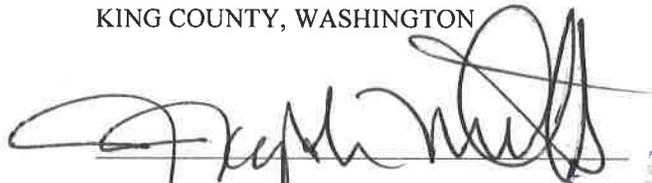
14 SECTION 1. The executive is authorized to execute a lease for the Cambridge

15 site with the city of Kent, substantially in the form of Attachment A to this ordinance, and
16 to take all actions necessary to implement the terms of the lease.
17

Ordinance 18658 was introduced on 12/4/2017 and passed by the Metropolitan King County Council on 2/20/2018, by the following vote:

Yes: 6 - Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski,
Mr. Upthegrove and Ms. Kohl-Welles
No: 0
Excused: 3 - Mr. von Reichbauer, Mr. Gossett and Ms. Balducci

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


J. Joseph McDermott, Chair

ATTEST:


Melani Pedroza, Clerk of the Council



RECEIVED
2018 FEB 27 PM 3:36
CLERK
METROPOLITAN KING COUNTY COUNCIL

APPROVED this 26 day of FEBRUARY, 2018.


Dow Constantine, County Executive

Attachments: A. Lease Agreement

ATTACHMENT A:
LEASE AGREEMENT

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made by and between the **CITY OF KENT**, a Washington municipal corporation ("**Landlord**"), and **KING COUNTY**, a political subdivision of the State of Washington, having offices for the transaction of business at 500 Fourth Avenue, Suite 830, Seattle, Washington 98104 ("**Tenant**"), for a wireless communications facility located at 3300 S. 264th Street, Kent, Washington ("**Cambridge Tank**").

BACKGROUND

A. Landlord is the owner in fee simple of a parcel of land located in the City of Kent, King County, Washington, legally described on the attached **Exhibit A** (the "**Property**").

B. Landlord has leased a portion of the Property ("**ValleyComm Lease**") to Valley Communications Center, an administrative agency formed pursuant to RCW 39.34 ("**ValleyComm**"), for the installation and operation of a tower, shelter, fuel storage tank, utilities and associated equipment and improvements ("**ValleyComm Facilities**").

C. Tenant intends to acquire the ValleyComm Facilities listed in Exhibit D, and sublet space on the acquired ValleyComm Facilities back to ValleyComm and ValleyComm's tenants located thereon; simultaneously Landlord intends to terminate the ValleyComm Lease so that Tenant may lease the space on the Property on which the ValleyComm Facilities are located.

D. Tenant desires to lease that portion of the Property depicted on the attached **Exhibit B**, together with nonexclusive access and utility easements, as described or depicted on the attached **Exhibit C**, to construct, operate and maintain a communication facility and associated equipment and improvements.

E. Tenant plans to fund, procure sites for such communication facilities and along with other municipalities in King County, establish the Puget Sound Emergency Radio Network (the "**PSERN System**") to eventually provide service in King County as authorized by Proposition 1 and King County Ordinances 17993, 18074 and 18075.

F. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

AGREEMENT

In consideration of their mutual covenants, the parties agree as follows:

1. Lease.

1.1. Leased Premises. Landlord leases to Tenant and Tenant leases from Landlord that portion of the Property described on the attached **Exhibit A** and depicted on the attached **Exhibit B** (the "**Premises**") together with non-exclusive easements for

ingress, egress and utilities over the Property as depicted on **Exhibit B** and **Exhibit C** (the "**Easements**"). In addition to the Premises, Landlord hereby grants Tenant temporary access to additional space near the Premises for staging purposes during Tenant's construction activities, in location(s) to be agreed upon by the parties.

1.2. This Lease is not a franchise nor is it a permit to use the City of Kent's rights-of-way. Any franchise or permit must be obtained separately from Landlord.

2. Term.

2.1. The term of this Lease shall be for a period of twenty-five (25) years, commencing on the Commencement Date, as defined in Section 2.2, and terminating on the last day of the month in which the twenty-fifth anniversary of the Commencement Date occurs.

2.2. The "**Commencement Date**" shall be the last date after both Landlord's and Tenant's authorized representatives have executed this Lease and on which all of the following conditions have been met:

(a) the ValleyComm Lease and all subleases and licenses thereto are terminated by mutual consent of ValleyComm and Landlord on terms approved in writing by the Tenant;

(b) ValleyComm assigns through written agreement to Tenant and Tenant assumes from ValleyComm all or part of the ValleyComm Facilities; and

(c) ValleyComm and Tenant enter into a written agreement for ValleyComm's sublease of space within the Premises for ValleyComm's continued operation of such ValleyComm Facilities that are not transferred to Tenant (if applicable).

In the event that all such conditions have not been met within eighteen (18) months after the date this Lease is fully executed by both parties, Tenant shall have the right, upon written notice to Lessor, to deem this Lease null and void and of no further force or effect. Landlord and Tenant agree that they shall acknowledge the Commencement Date as follows: Tenant shall notify Landlord in writing of the Commencement Date and within ten (10) business days of receipt thereof, Landlord shall acknowledge the Commencement Date by returning the signed written instrument to Tenant.

3. Rent.

3.1. Tenant's obligation to pay rent under this Lease shall commence upon the Commencement Date. As used herein, a "**lease year**" shall be January 1st through December 31st during the term of this Lease. Rent shall be Four Thousand Three Hundred Twenty and No/100 Dollars (\$4,320.00) per lease year ("**Rent**"), payable in advance. Rent shall be payable as follows: Rent for the first partial lease year (from the Commencement Date until the next December 31st) shall be delivered to Landlord within forty-five (45) days after the date Tenant receives Landlord's written acknowledgement confirming the Commencement Date. Thereafter, Rent shall be paid to Landlord annually in advance, on

or before January 1st of each lease year until the Lease expires or is terminated; provided that if the first full lease year will commence prior to the due date of Rent for the first partial lease year, then the Rent for the first full lease year shall also be due and payable within forty-five (45) days after the date Tenant receives Landlord's written acknowledgement confirming the Commencement Date. Rent for partial lease years shall be prorated and if Rent is ever overpaid it shall be either refunded or applied to future payments at Tenant's discretion.

3.2. All Rent payments shall be mailed to:
City of Kent
220 Fourth Avenue South
Kent, WA 98032
Attention: Facilities Superintendent

3.3. Tenant shall pay Landlord a late payment charge equal to five percent (5%) of the Rent for any payment not paid within thirty (30) days of when due. In addition, any amounts not paid when due shall bear interest from the date due until paid at the rate of one percent (1%) per month.

3.4. Rent shall increase by fifteen percent (15%) of the then-current rental rate on each successive five (5) year anniversary of the first full lease year after the Commencement Date. For example purposes only, if the Commencement Date is June 23, 2017, and the first full lease year thereafter commences on January 1, 2018, then on January 1, 2023, Rent shall be increased to \$4,968/year; on January 1, 2028, Rent shall be increased to \$5,713.20/year; and on January 1, 2033, Rent shall be increase to \$6,570.18/year; and so on, during the term of this Lease.

3.5. Rent, and all other consideration to be paid or provided by Tenant to Landlord shall constitute Rent and shall be paid or provided without offset.

4. Use of Premises.

4.1 Tenant may use the Premises for the construction, installation, operation, maintenance, repair, replacement, upgrade, update, addition, modification and removal of the communications facilities, and associated equipment and improvements, including but not limited to the ValleyComm Facilities Tenant acquires, generally depicted on **Exhibit B** and described on the attached **Exhibit D** (collectively, the "**Improvements**") for the PSERN System as it is presently designed or may hereinafter be modified or changed ("**Permitted Use**"). Tenant shall use the Premises for no other purpose.

4.2 Prior to performing any installation or construction work within the Premises, Tenant shall secure all necessary federal, state and local licenses, permits, and approvals for the Permitted Use (collectively referred to hereinafter as "**Government Approvals**") at its sole expense. Landlord hereby authorizes Tenant to make and sign, as Landlord's agent, any and all applications and/or submissions necessary to obtain all Government Approvals from all applicable governmental and/or regulatory entities required for the Permitted Use of the Improvements within the Premises. Landlord agrees to

reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

4.3 Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice. Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals. Before performing any of the work described in this Section 4.3, Tenant must receive prior e-mailed approval from Landlord's Public Works Director or his/her designee.

5. Tenant Improvements.

5.1 (a) Tenant may improve the Premises by constructing the Improvements as depicted on **Exhibit B** and described on **Exhibit D**. Tenant is responsible to provide all labor, materials, equipment, and insurance necessary for the Improvements. Prior to commencing construction, Tenant shall submit plans and specifications drawn to scale for all Improvements to Landlord for Landlord's written approval, which approval shall not be unreasonably withheld. Construction, installation, or alteration of Improvements shall not be commenced until plans for such work have been approved in writing by the Landlord and all necessary permits have been properly issued. Landlord's Public Works Department shall give such approval or provide Tenant with its requests for changes within thirty (30) business days of Landlord's receipt of Tenant's plans and specifications. The plans and specifications review schedule described within this Section 5.1(a) does not apply to the City of Kent acting as a governmental entity issuing permits and other approvals for these Improvements, and Tenant shall pay all permit costs in addition to Rent described in Section 3.

(b) After the initial installation of the Improvements, Tenant shall obtain Landlord's written consent prior to making any material changes in the exterior appearance, size or design of the Improvements on the Property (including the antennas on the tower), the location or size of the Premises, and any trenching on the Property. Landlord's consent shall not be unreasonably withheld, delayed or conditioned. After the initial installation of the Improvements, except as provided within this Section 5.1(b), Landlord's consent shall not be required for any installation, maintenance, repair, replacement, addition, removal, update or upgrade of any of the Improvements or utilities located within the Premises or Easements.

(c) Tenant shall consult with Landlord to arrange a time it will conduct construction of any Improvements that require Landlord's prior written consent. Tenant agrees to adhere to the pre-arranged schedule for construction of Improvements.

5.2 (a) Unless the parties otherwise agree in writing, Tenant shall remove the Improvements from the Premises upon termination of the Lease. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any

other equipment, structures or operations on the Property, including use of the Property by Other Providers as described in Section 6.1, Landlord, or any of Landlord's assignees.

(b) Upon removal of the Improvements, as provided in Section 5.2(a), Tenant shall restore all affected areas of the Property, the Premises and the Easements, *normal wear and tear excluded*, to the reasonable satisfaction of Landlord.

(c) All costs and expenses for the removal of the Improvements and restoration of the Property, the Premises and the Easements and any costs and expenses arising from this removal shall be solely borne by Tenant.

6. Use by Other Providers.

6.1 Subject to the terms of Section 13.3, Tenant shall cooperate with each new other communications provider that Landlord leases space on the Property to ("**Other Provider(s)**"), excluding space within the Premises.

6.2 Each new Other Provider shall be solely responsible for the cost of locating and placing its equipment on the Property. The Other Provider shall also be responsible for any liabilities that arise from the Other Provider's use of the Property.

7. Net Lease. Landlord shall not be required to make any expenditures of any kind in connection with this Lease or to make any repairs or improvements to the Premises, with the exception that Landlord is solely responsible for the maintenance of its personal property located on the Property and the Easements, unless the Landlord's personal property and/or Easements are damaged by Tenant or Tenant's agents, employees, licensees or contractors. The parties agree that this is a net Lease intended to assure Landlord the Rent on an absolute net basis.

8. Maintenance.

8.1. Tenant shall, at its own expense, maintain the Premises (less reasonable wear and tear or loss by casualty or other causes beyond Tenant's reasonable control), and all of Tenant's Improvements, equipment, and other personal property on the Premises in good working order, condition and repair, including any new landscaping that may be required through the permitting process. Tenant shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference thereon. Tenant shall remove graffiti at its own cost within fifteen (15) calendar days of receipt of written notice to remove by Landlord. Landlord may remove graffiti, at its own cost, without notice to Tenant. Tenant shall install, maintain, and replace, when necessary, all new landscaping, at Tenant's sole expense, that may be required by any necessary City of Kent permits. **The use of herbicides or insecticides by Tenant on the Premises is strictly prohibited.**

8.2. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not maintain, repair or otherwise touch or interfere with Tenant's Improvements without Tenant's prior written consent; provided that, in the event of an emergency posing an imminent threat of bodily injury or property damage, Landlord may

take action necessary to abate the threat and shall give Tenant notice of such actions taken as soon as is reasonably possible thereafter.

9. Access. Landlord and its agents shall have the right to enter the Premises at all reasonable times, upon not less than two (2) business days' e-mailed notice to Tenant's authorized representative, so that Tenant may accompany Landlord, to examine and inspect the Premises; provided, however, that in no event will Landlord, its employees, agents or contractors remove, relocate, alter, modify or otherwise tamper with Tenant's Improvements. Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises, including by foot, motor vehicle or by air over or along the Easements generally depicted in **Exhibit B.**

10. Utilities. Tenant shall, at its expense, separately meter charges for the consumption of electricity and other utilities associated with its use of the Premises and shall timely pay all costs associated therewith.

11. License Fees. Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Premises and Easements.

12. Approvals; Compliance with Laws. Tenant's use of the Premises and Easements is contingent upon its obtaining all certificates, permits, zoning, and other approvals that may be required by any federal, state or local authority. Tenant shall erect, maintain and operate the Improvements in accordance with all applicable communication site standards, statutes, ordinances, rules and regulations now in effect or that may be issued thereafter by the Federal Communications Commission ("**FCC**"), or other federal or state governmental agency.

13. Interference.

13.1 Tenant's installation, operation, and maintenance of the Improvements shall not damage or interfere in any way with Landlord's activities on the Property. Landlord shall be the sole judge of interference caused to the Landlord's radio frequency ("RF") transmissions and receptions on the Property (outside of the Premises); provided Landlord shall make all determinations regarding the cause of any such RF interference based on independent review by experts in the field of RF interference. Tenant agrees to correct, within thirty (30) calendar days of receipt of written notice of interference from Landlord, all such actions that materially interfere with Landlord's use of the Property. If the interference cannot be corrected without Tenant's wireless signal coverage goals from the Premises being materially impaired, Tenant shall have the right to terminate the Lease.

13.2 Before approving the placement of the Improvements, Landlord may obtain, at Tenant's expense, an interference study indicating whether Tenant's intended use will interfere with any existing communications facilities on the Property.

13.3 In the event that an Other Provider requests a lease from Landlord to place any type of antennae or transmission facility on the Property, excluding the Premises, Landlord shall submit a proposal complete with all technical specifications reasonably

requested by Tenant to Tenant for review for noninterference; however, Landlord shall not be required to provide Tenant with any specifications or information claimed to be of a proprietary nature by any third party. The Other Provider shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Tenant shall have forty-five (45) calendar days following receipt of any proposal to make any objections thereto, and failure to make any objection within this forty-five (45) day period shall constitute consent by Tenant to the installation of antennae or transmission facilities pursuant to said proposal. If Tenant gives notice of objection due to interference during this forty-five (45) day period and Tenant's objections are verified by Landlord to be valid, then Landlord shall not proceed with such proposal unless the Other Provider modifies the proposal in a manner determined, in Landlord's reasonable judgment, to adequately eliminate reasonable interference concerns asserted by Tenant. If the Other Provider actually interferes with the operations of Tenant, Landlord shall make good faith efforts to have the Other Provider cease operations until the interference can be eliminated. A governmental unit may be allowed to place antennae or other communications facilities on the Property, excluding the Premises, as long as there is no interference with Tenant's use.

14. Default. It shall be a default if:

14.1 Tenant fails to pay Rent or any other sums payable to Landlord when due, and does not cure such default within thirty (30) calendar days after receipt of written notice;

14.2 Tenant removes its Improvements on the Premises for a period longer than six (6) consecutive months and fails to replace them during this time period;

14.3 Tenant fails, at any time during this Lease, to conform or comply with any local land use, regulatory, or building permit conditions issued by the City of Kent in connection with the construction, operation, or maintenance of Tenant's Improvements contemplated in this Lease, and such failure is not cured within thirty (30) days after receipt of written notice; provided, however, that Tenant will not be in default under this subsection if it begins to cure the alleged failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion;

14.4 Tenant is finally adjudicated as bankrupt or makes any assignment for the benefit of creditors;

14.5 Tenant becomes insolvent;

14.6 Either party fails to perform any other covenant or condition of this Lease and does not cure such default within thirty (30) calendar days after receipt of written notice specifying the failure at issue; provided, however, that neither party will be in non-monetary default under this subsection if it begins to cure the alleged default within the thirty (30) day period and thereafter diligently prosecutes the cure to completion; or

14.7 Tenant fails at any time to maintain insurance as required in Section 21 of this Lease and the attached **Exhibit E** and this failure is not cured within fifteen (15) days following Tenant's receipt of written notice of this failure.

15. Cure by Non-Defaulting Party. In the event of any uncured default of this Lease, the non-defaulting party may, at any time after the specified notice period has run, cure the default for the account of and at the expense of the defaulting party. If the non-defaulting party is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the non-defaulting party's rights under this Lease, the sums so paid, with all interest, costs and damages shall be due from the defaulting party within thirty (30) days following the defaulting party's receipt of an invoice together with reasonable supporting documentation evidencing the sums and expense. If the defaulting party disputes the appropriateness of the interest, costs and damages in good faith, the defaulting party will pay the interest, costs and damages "under protest". Any payment under protest shall not be considered an admission of liability or a waiver of rights under this Lease, and the payment shall be subject to refund if the defaulting party's position is upheld by a court of competent jurisdiction.

16. Optional Termination.

16.1 Optional Termination by Tenant. This Lease may be terminated by Tenant if:

(a) Tenant is unable to obtain or maintain any license, permit, or other Governmental Approval necessary for the construction and/or operation of Tenant's business under this Lease or Tenant, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary;

(b) There is a determination made pursuant to an official unappealable order of the FCC that continued use of the Premises by Tenant is in fact a threat to public health, safety or welfare that cannot be remediated; or

(c) Tenant or Tenant's vendor of the PSERN System determines that, for technical, design, interference, environmental, economic or title reasons, the Premises are not necessary or suitable for the operation of the PSERN System or the use described in this Lease.

16.2 Optional Termination by Landlord. This Lease may be terminated by Landlord:

(a) Upon eighteen (18) months' prior written notice to Tenant, if Landlord decides, in its sole discretion for any reason, to discontinue use of the Premises for municipal or public purposes;

(b) If there is a determination made pursuant to an official unappealable order of the FCC that continued use of the Premises by Tenant is in fact a threat to public health, safety or welfare that cannot be remediated;

(c) If Tenant's use of the Premises violates applicable laws or ordinances; or

(d) If Tenant loses its license to provide service for any reason, including, but not limited to, non-renewal, expiration, or cancellation of its license.

17. Termination; Notice. Except as otherwise provided in Section 16.2(a) any notice of termination pursuant to Section 16 shall be given to the other party in writing at least thirty (30) calendar days prior to the termination date in accordance with the provision of Section 26.

18. Damage or Destruction. If Tenant's Improvements or any portion thereof are destroyed or damaged so as to materially hinder effective use of the Premises through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) calendar days' written notice to Landlord. In such event, Tenant shall promptly remove all Improvements from the Premises as set forth in Section 5.2. This Lease (and Tenant's obligation to pay Rent) shall terminate upon Tenant's fulfillment of the obligations set forth in Section 5.2 and Tenant shall be entitled to the prorated reimbursement of any prepaid Rent. If Tenant believes it is feasible to relocate the Improvements to a different location on the Property, the parties agree that the Premises will be relocated. Landlord will provide an interim site for Tenant to locate temporary, mobile communications facilities and equipment as necessary to continue service during repair or relocation of the Premises or Improvements. A survey will be prepared for the relocated Premises (including access and utility easements) and the survey will replace **Exhibit B**.

19. Condemnation. In the event the Premises are taken by eminent domain, this Lease shall terminate as of the date title to the Premises vests in the condemning authority. In the event a portion of the Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of the date of title transfer, by giving thirty (30) calendar days' written notice to the other party. If it is feasible to relocate the Improvements to a different location on the Property without any impairment to the quality of service provided by the Improvements, the parties agree that the Premises will be relocated. A survey will be prepared for the relocated Premises (including access and utility easements) at Landlord's expense, and the survey will replace **Exhibit B**. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and Landlord shall receive full amount of the award. Tenant hereby expressly waives any right or claim to any portion of all damage awards, whether awarded as compensation for diminution in value of the leasehold or the fee of the Premises. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, and Improvements.

20. Indemnity.

20.1 Disclaimer of Liability. Except for the negligence or willful misconduct of Landlord, Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction,

maintenance, repair, use, operation, condition or dismantling of the Property, the Premises, the Easements, and any Improvements made by Tenant.

20.2 Tenant Indemnification. Tenant agrees to indemnify and hold Landlord harmless as provided herein to the maximum extent possible under law. Accordingly, Tenant agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Landlord, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, causes of action, judgments, damages, costs, attorney fees, government orders, penalties, or other requirements (collectively, "**Claims**"), including costs of defense thereof for injury to persons, death, or property damage which is caused by or arises out of Tenant's exercise of rights and privileges granted by this Lease, except to the extent of the Landlord's negligence and willful misconduct.

20.3 Landlord Indemnification. Landlord agrees to indemnify and hold Tenant harmless as provided herein to the maximum extent possible under law. Accordingly, the Landlord agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Tenant, its appointed and elected officials, and employees from and against liability for all Claims, including costs of defense thereof for injury to persons, death, or property damage which is caused by or arises out of Landlord's exercise of rights and privileges granted by this Lease, except to the extent of the Tenant's negligence and willful misconduct.

20.4 Assumption of Risk. Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about the Property, the Premises and the Easements. Tenant's assumption of risk shall not apply: (i) to any latent defects or other dangerous situations, if Landlord knows or should know that defect or situation exists but has not disclosed that information to Tenant, or (ii) to any dangerous conditions arising from Landlord's negligence or willful misconduct.

21. Insurance. Tenant agrees to comply with the insurance requirements of **Exhibit E** at all times during the Term of this Lease. Any payment of deductible or self-insured retention shall be the sole responsibility of the Tenant.

22. Hazardous Substance Indemnification. Tenant represents and warrants that its use of the Premises and Easements will not result in the negligent or intentional introduction, storage, disposal, or transport over the Premises and Easements of any hazardous substance in violation of any federal or state law. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such hazardous substance introduced by Tenant and any damage, loss, or expense or liability resulting from such release, including all reasonable attorneys' fees, costs and penalties incurred as a result thereof, except any release caused by the negligence or willful misconduct of Landlord, its employees or agents. Similarly, Landlord warrants that the Premises and Easements are free of any hazardous substances and agrees to indemnify and hold Tenant harmless from the Landlord's negligent or intentional introduction of any hazardous substance on the Property. "**Hazardous substance**" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by 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 it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

23. Holding Over. Any holding over after the expiration of the Term of this Lease, with the consent of the Landlord, shall be construed to be a tenancy from month to month and rent shall be paid by Tenant at one hundred twenty-five percent (125%) of the monthly proration of the annual Rent in effect upon the expiration of the Lease, but shall otherwise be on the same terms and conditions herein specified, so far as applicable.

24. Acceptance of Premises. With the exception of latent defects and any hazardous substance contamination existing prior to the Commencement Date, by taking possession of the Premises, Tenant accepts the Premises and Easements "AS-IS," in the condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Premises or Easements, or their fitness for any of Tenant's intended uses thereof.

25. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than thirty (30) calendar days' prior request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identify the modifications); (b) the dates to which Rent and other charges have been paid; (c) so far as the person making the certificate knows, Landlord is not in default under any provisions of the Lease; and (d) such other matters as Landlord may reasonably request.

26. Notices. All notices, requests, demands, and other communications required to be sent pursuant to this Lease shall be in writing and shall be deemed given if mailed, certified mail, return receipt requested, or by a nationally recognized courier service, to the following addresses:

If to Landlord, to: Public Works Department, Attn: Water System Manager
City of Kent
220 Fourth Avenue South
Kent, WA 98032

With a copy to: City Clerk
City of Kent
220 Fourth Avenue South
Kent, WA 98032

If to Tenant, to: King County Facilities Management Division
Real Estate Services, Attn: Leasing Supervisor
Re: Cambridge PSERN Lease
500 Fourth Avenue, Suite 830
Seattle, WA 98104

With a copy to: King County Facilities Management Division
Director's Office
Attn: Gail Houser
Re: Cambridge PSERN Lease
500 Fourth Avenue, Suite 800
Seattle, WA 98104

With a copy to: King County
Emergency Radio Communications Division - KCIT
Attn: Marlin Blizinsky
Re: Cambridge PSERN Lease
401 Fifth Avenue, Suite 600
Seattle, WA 98104

27. Subletting and Assignment.

27.1 Tenant shall not sublet all or any part of the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; provided that Tenant shall have the right without Landlord's consent to sublet space within the Premises to ValleyComm and any tenant of ValleyComm that is using any part of the ValleyComm Facilities as of the date the ValleyComm Lease is terminated.

27.2 Tenant shall not assign its interest in this Lease without Landlord's prior written consent, which will not be unreasonably withheld. Consent by Landlord to any assignment shall not constitute a waiver of the necessity of such consent to any subsequent assignment.

27.3 Landlord acknowledges that Tenant and other municipalities participating in the PSERN System intend to establish a new governmental non-profit entity that will eventually own and operate the PSERN System. Notwithstanding anything in this Lease to the contrary, Tenant may assign its interest in this Lease, without the Landlord's consent, to that governmental non-profit entity or to any entity existing now or in the future that will be responsible for the operation, maintenance, management, updating and upgrade or replacement of the PSERN System as authorized by law; provided that Tenant shall provide notice to Landlord within forty-five (45) calendar days after the execution date of such assignment.

27.4 In the event of an assignment, the assignee shall assume all liability of the assignor and the assignor will be relieved of all future performance, liabilities and obligations under this Lease to the extent of such assignment.

28. Other Leases. Nothing in this Lease shall preclude Landlord from leasing other space outside of the Premises for communications equipment to any person or entity that may be in competition with Tenant, or to any third-party, subject to the provisions of Section 13.3 above.

29. Successors and Assigns. This Lease shall run with the land and be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

30. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

31. Taxes. Tenant shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Premises and Easements that are directly the result of Tenant's Improvements, if any, which become due and payable during the Term of this Lease.

32. Miscellaneous.

32.1 Landlord and Tenant represent that each, respectively, has full right, power, and authority to execute this Lease.

32.2 This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

32.3 This Lease shall be construed in accordance with the laws of the State of Washington. Venue and jurisdiction of any lawsuit arising out of the performance or obligations of this Lease shall be in the King County Superior Court. In the event of claim or litigation to enforce any terms of this Lease, each party shall be responsible for its own legal costs and attorney fees except as noted in Sections 20 and 22.

32.4 If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

32.5 Landlord covenants that Tenant, on paying the Rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

32.6 Landlord agrees to sign a short form Memorandum of Lease that Tenant may record at Tenant's expense.

33. Non-Discrimination. Landlord and Tenant, for themselves, their successors, and assigns as a part of the consideration hereof, do hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state or local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Landlord and

Tenant shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Tenant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Lease and may result in ineligibility for further agreements between the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date and year set forth below.

LANDLORD:
CITY OF KENT

TENANT:
KING COUNTY

By: 
Print Name: Suzette Cooke
Its: Mayor
Date: 10/19/17

By: _____
Print Name: Anthony O. Wright
Its: Director, Facilities Management Division
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Kent Law Department

Busch Law Firm PLLC

[ACKNOWLEDGMENTS ON FOLLOWING PAGES]

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **Anthony O. Wright** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Director, Facilities Management Division, of King County** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

-Notary Seal Must Appear Within This Box-

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

(Signature)
NOTARY PUBLIC, in and for the State
of Washington, residing at _____
My appointment expires _____

EXHIBIT A
LEGAL DESCRIPTION OF
LANDLORD'S PROPERTY & THE PREMISES

Legal Description of Landlord's Property:

PARCEL A:

EXHIBIT A LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

THE SOUTH 20 FEET OF THE NORTH 310 FEET OF THE EAST 120 FEET OF THE WEST 360 FEET THEREOF;

TOGETHER WITH THE SOUTH 250 FEET OF THE NORTH 470 FEET OF THE EAST 210 FEET OF THE WEST 570 FEET THEREOF;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT; □THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT 140 FEET TO POINT OF BEGINNING; THENCE SOUTH ALONG SAID LINE 110 FEET; □THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT 65 FEET; □THENCE NORTHEASTERLY TO TRUE POINT OF BEGINNING.

PARCEL B:

AN EASEMENT FOR INGRESS AND EGRESS AS DISCLOSED BY INSTRUMENTS RECORDED UNDER RECORDING NUMBERS 7906081065 THROUGH 7906081073, INCLUSIVE, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST, QUARTER OF SECTION 27, TOWNSHIP 22 NORTH RANGE 4 EAST, W.M. IN KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH 250 FEET OF THE NORTH 470 FEET OF THE EAST 210 FEET OF THE WEST 570 FEET; BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; □THENCE NORTH 89°14'19" WEST ALONG THE NORTH LINE OF SAID SOUTH 250 FEET A DISTANCE OF 30 FEET;

THENCE NORTH A DISTANCE OF 35 FEET, MORE OR LESS, TO THE SOUTHERLY MARGIN OF HAMPTON WAY; □THENCE IN A SOUTHERLY AND EASTERLY DIRECTION ALONG SAID SOUTHERLY MARGIN TO A POINT WHICH LIES NORTH OF THE TRUE POINT OF BEGINNING:

THENCE SOUTH A DISTANCE OF 17 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

PARCEL C:

THAT CERTAIN PROPOSED INGRESS, EGRESS, WATERLINE INSTALLATION, MAINTENANCE, DRAINAGE & REPAIR EASEMENT, AS MORE PARTICULARLY DESCRIBED IN CITY OF KENT BOUNDARY LINE ADJUSTMENT, RECORDED UNDER RECORDING NUMBER 20100811900001.

SITUATE IN THE CITY OF KENT, COUNTY OF KING, STATE OF WASHINGTON.

APN: 272204-9157

Address: 3300 S. 264th Street, Kent, Washington

Legal Description of the Premises:

A tract of land located in the Northwest Quarter of the Southwest Quarter of Section 27, Township 22 North, Range 4 East, W.M., in King County, Washington, being also a portion of Parcel B of City of Kent Boundary Line Adjustment No. LL-2010-7, recorded under King County Recording No. 20100811900001, described as follows:

Commencing at a found cased monument in the centerline of Hampton Way at the point of curvature just west of the intersection with Eton Court, from which point a found cased monument in the centerline of Hampton Way at the point of tangency just south of the intersection with S 264th Street bears North 54°12'05" West 267.12 feet;

Thence South 59°21'21" West 336.87 feet to the northeast corner of a fenced compound and the Point of Beginning;

Thence along said fenced compound, South 00°25'14" West 74.42 feet to the south line of said Parcel B;

Thence along said south line, North 89°14'50" West 45.33 feet to the southwest corner thereof;

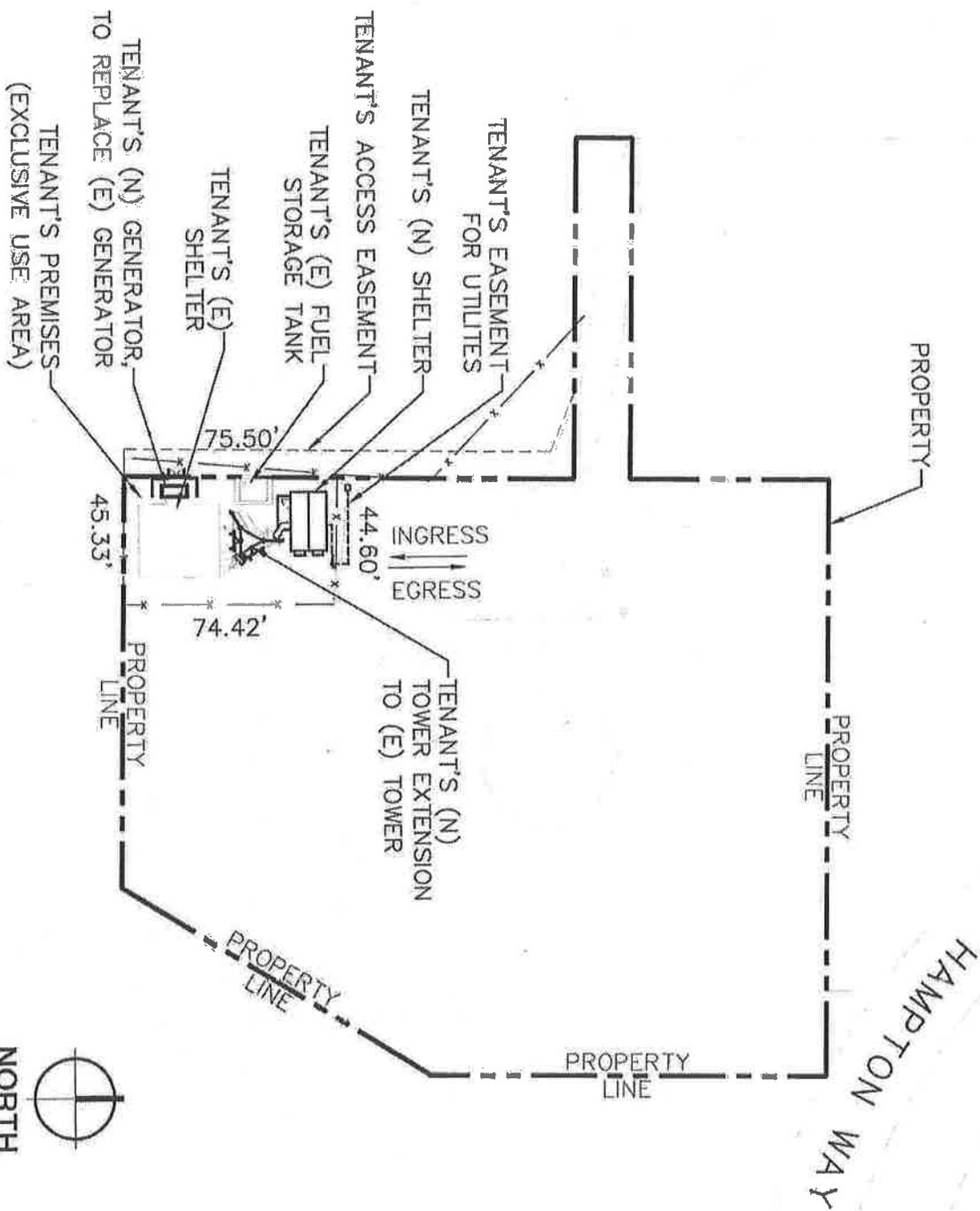
Thence along the west line thereof, North 00°59'47" East 75.50 feet to the intersection with the fenced compound;

Thence along said fenced compound, South 88°38'01" East 32.29 feet;

Thence continuing along said fenced compound, South 85°50'20" East 12.31 feet to the Point of Beginning;

Containing 3,380 square feet, more or less.

(2017)



DEPICTION OF PREMISES

EXHIBIT B

King County Lease #: PSERN-12
King County Site Name: Cambridge

EXHIBIT C
DESCRIPTION OF EASEMENTS

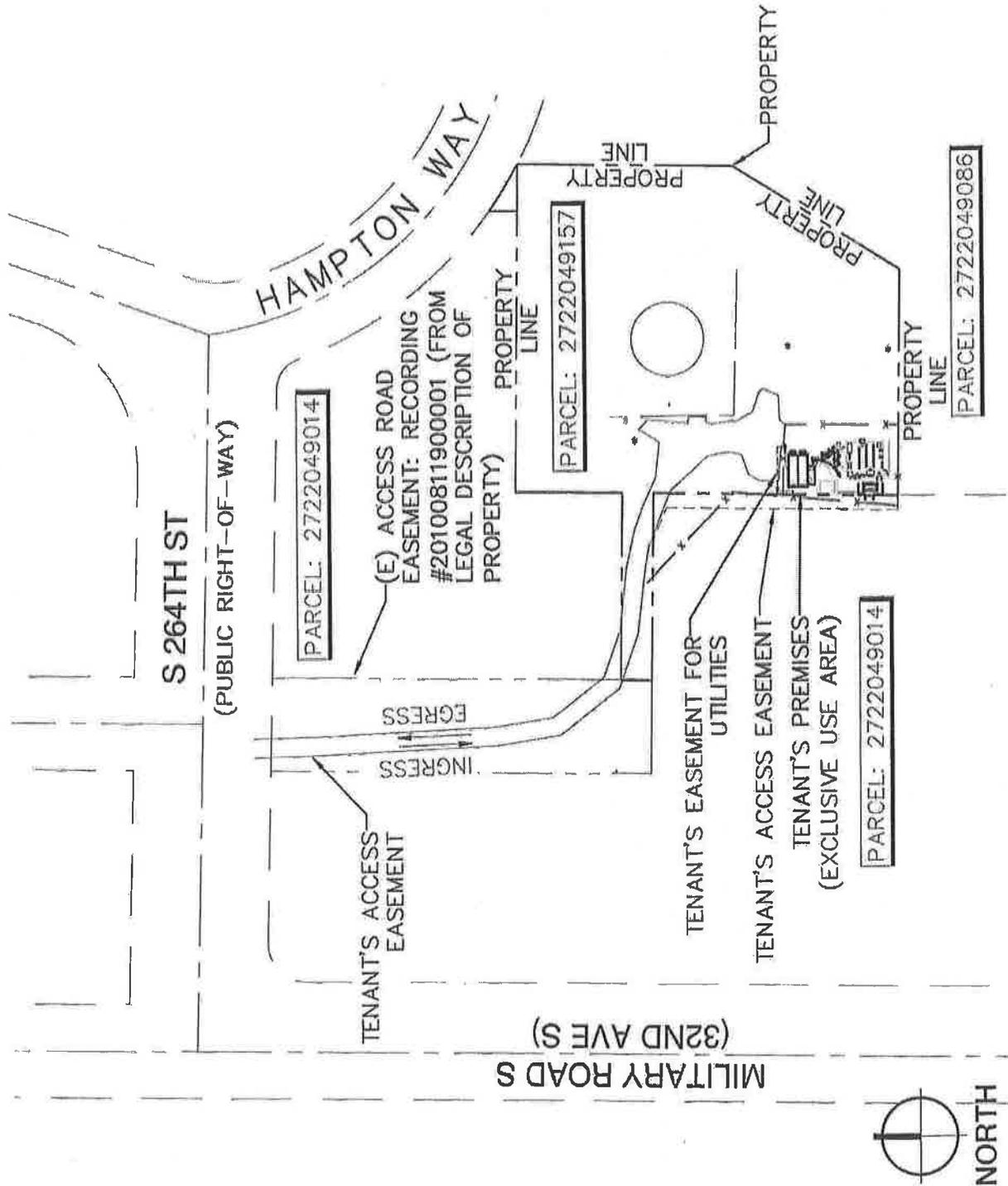


EXHIBIT D**VALLEYCOMM FACILITIES TO BE ACQUIRED BY KING COUNTY/PSERN**

- 140ft tower
- 60kw diesel generator
- 24'4" x 22'4" (543 sq.ft.) equipment shelter, including the utilities and HVAC therein
- 2,000-gallon fuel storage tank

SCOPE OF WORK FOR THE IMPROVEMENTS TO BE COMPLETED BY KING COUNTY/PSERN

- Extend the existing 140ft tower by 20ft to 160ft
- Install two (2) microwave dishes and six (6) omni-directional antennas on the existing extended tower
- Replace the existing 60KW diesel generator with a new 80KW diesel generator
- Install a new sound-attenuating fence and gate around the new generator
- Install a new 12'x20' prefabricated equipment shelter
- Install a new ice bridge and cable tray from the new shelter to the existing tower
- Trenching from the existing Puget Sound Energy (PSE) pad-mounted transformer (located just north of the existing compound fence) to a new H-Frame with meter and disconnect just inside the fence. This is required for King County's new 120/240V 200A service from PSE

EXHIBIT E**INSURANCE REQUIREMENTS****I. General Insurance Requirements**

Tenant shall procure and maintain, for the duration of this Lease, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the Tenant's operation and use of Landlord's facilities.

Tenant maintains a fully funded self-insurance program for the protection and handling of the Tenant's liabilities including injuries to persons and damage to property.

Landlord acknowledges, agrees and understands that Tenant is self-funded for all of its liability exposures. Tenant agrees, at its own expense, to maintain, through its fully funded self-insurance program, coverage for all of its liability exposures for this Lease. Tenant agrees to provide Landlord with at least thirty (30) days prior written notice of any material change in Tenant's self-funded insurance program and will provide Landlord with a letter of self-insurance as adequate proof of coverage. Landlord further acknowledges, agrees and understands that Tenant does not purchase commercial general liability insurance and is a self-insured governmental entity; therefore Tenant does not have the ability to name Landlord as an additional insured.

If Landlord is not a governmental agency which maintains a fully funded self-insurance program in accordance with applicable law, Landlord will maintain commercial general liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include Tenant as an additional insured with respect to claims arising out of or related to this Lease.

Landlord shall carry "All Risk" property insurance in an amount equal to the full replacement value of its structures and improvements on the Property.

Tenant shall maintain "All Risk" property insurance in an amount equal to the full replacement value of all of its improvements and personal property located on the Premises or shall self-insure improvements and personal property on the Premises.

Notwithstanding any language to the contrary contained in this Lease, Landlord and Tenant agree that they shall not make a claim against or seek recovery from the other for any loss or damage to their property, or the property of others, resulting from fire or other hazards covered by fire insurance or required to be covered under this Lease and each hereby releases the other from any such claim or liability regardless of the cause of such loss.

Tenant agrees to ensure all contractors, sub-contractors, consultants or other parties utilized by Tenant to perform work on Landlord's Property are fully insured to the extent of coverage specified in Subsection II of this Exhibit E.

II. Specific Insurance Requirements

If Tenant ceases to maintain the aforementioned program of self-insurance, Tenant shall obtain insurance of the types and limits described below:

A. Minimum Scope of Insurance.

1. **Commercial General Liability** insurance shall be written on Insurance Services Office ("ISO") occurrence form at least as broad as CG 00 01 and shall cover premises liability, contractual liability, products-completed operations liability, and independent contractors liability. The Landlord shall be named as an additional insured on Tenant's commercial general liability insurance policy using a form at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used.
2. **Automobile Liability** insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on ISO form or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

B. Minimum Amounts of Insurance.

1. **Commercial General Liability** insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
2. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

The coverage amounts set forth may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

C. Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for commercial general liability insurance:

1. Tenant's insurance coverage shall be primary insurance with respect to the Landlord. Any insurance or self-insurance coverage maintained by the Landlord shall be excess of the Tenant's insurance and shall not contribute with it.
2. Tenant is contractually obligated to provide at least 30 days prior notice to Landlord in the event of cancellation of any coverage related to this Lease.
3. Tenant's insurance coverage shall be written on an occurrence basis only. Claims made coverage is not acceptable.

D. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-,VII.

E. Verification of Coverage.

If Tenant ceases to maintain the aforementioned program of self-insurance, upon Landlord's request, Tenant shall furnish Landlord with original certificates of insurance and a copy of the additional insured endorsement, evidencing the insurance requirements of the Tenant, and Landlord shall be named as an additional insured.



King County

Office of Risk Management Services
Department of Executive Services
500 Fourth Ave #320
Seattle, WA 98104
(206) 263-2250

KING COUNTY CERTIFICATE OF SELF-INSURANCE - 2017

This letter is to certify that King County is fully self-funded for all of its liability exposures. Should an incident occur involving the negligence of County employees acting in the scope of their employment, our self-funded program would respond.

King County, charter county government under the constitution of the State of Washington, maintains a fully funded Self-Insurance program for the protection and handling of the County's liabilities, including injuries to persons and damage to property.

This letter is also to certify that King County is protected from physical loss under the County's blanket property insurance policy. The policy is an "All Risk" policy that provides the County with protection for all County property wherever located.

Please note that this certificate is issued for informational purposes only and neither confers any rights, nor constitutes an agreement between King County and any other party.

If you have any questions, please do not hesitate to contact the King County Office of Risk Management Services, Insurance and Contracts group at the phone number above.

Sincerely,

The Office of Risk Management Services
Insurance and Contracts Group