

**NONEXCLUSIVE COMMUNICATION SITE SUBLEASE**

THIS NONEXCLUSIVE COMMUNICATION SITE SUBLEASE (this "Sublease") is made by and between the City of Marysville, a municipal corporation and political subdivision of the State of Washington (hereinafter sometimes called "the City" or "Sublessor"), and King County, Washington, a political subdivision of the State of Washington (hereinafter sometimes called "the County" or "Sublessee") this 12<sup>TH</sup> day of May, 2010.

**RECITALS**

- I. The City has entered into a Communication Site Lease (the "Master Lease") with Snohomish County Emergency Radio System ("SERS"), a Washington Interlocal non-profit corporation.
- II. Under the Master Lease SERS has constructed a Communication Facility consisting of an antenna and related structures on the premises.
- III. Under the Master Lease, the City has the exclusive right to enter into sublease agreements with third-party co-locators.
- IV. City and Sublessee have entered into a Marysville Tank Communications Site Installation Agreement and Sublessee desires to enter into a sublease with the City on the terms and conditions of this Sublease for the equipment installed.

**AGREEMENT**

In consideration of the mutual covenants contained in this Sublease, the parties agree as follows:

**1. RECOGNITION AND ACKNOWLEDGMENT OF MASTER LEASE.**

Unless specifically provided otherwise herein, Sublessee hereby recognizes, acknowledges and agrees to be fully bound to the terms of the Master Lease and all exhibits, schedules, General Terms and Conditions and Site Standards, Conditions and Interference Mitigation Requirements referenced in, attached to or incorporated into the Master Lease.

**2. WARRANTY OF CITY.** The City hereby warrants that the Master Lease is in full force and effect and the City is not in default thereof as of the execution date of this Sublease. The City agrees to continue to perform in accordance with the terms and conditions of the Master Lease. Except for the foregoing warranty, the City makes no warranty to Sublessee, either express or implied, concerning the Master Lease, the premises, or the suitability of the premises and improvements for Sublessee's intended use.

**3. NONEXCLUSIVE.** This is a nonexclusive Sublease and Sublessee

acknowledges and agrees that the site will be used by SERS as a communication facility and that the City may sublease the site and improvements to other sublessees to co-locate upon and use the premises and improvements for communications.

4. **PRECONDITIONS.** The City's performance under this Sublease is expressly preconditioned upon any preconstruction interference study conducted by or delivered to the City show that Sublessee's agreed equipment will cause interference as the City may determine, then at the option of the City, the City may declare this Sublease null and void and of no force and effect. There are no preconditions to Sublessee's payment and performance under this lease. Except as to any preconditions recognized by this paragraph, the parties shall be fully bound to this Sublease upon the stated effective date and sublessee shall fully pay all rents and other charges due and perform all obligations of Sublessee from and after the commencement date.

5. **PREMISES.** The City agrees to sublease to Sublessee and Sublessee agrees to lease from the City, upon the terms and conditions set forth herein, those areas and locations on the antenna, those related connectors, equipment, conduits and lines, and those storage areas described in detail on **Exhibit A** ("the connection and storage areas" or the "premises"). The connection and storage areas are located on premises depicted in an Area Map and Site Plans with legal description set out in detail in **Exhibit A** hereto (the "Site"). The connection and storage areas are part of an antenna and structures on the site described in detail in **Exhibit A** (the "Equipment and Structures List"). By taking possession of the premises, Sublessee accepts the premises in their existing condition. The City makes no representation or warranty with respect to the condition of the premises and site and the City shall not be liable for any latent or patent defect in the premises or the site.

6. **TERM.**

The initial term shall be for five (5) years and shall commence on December 1, 2009 and end on November 30, 2014. The term may be extended as permitted under the terms of this Sublease for one (1) additional five (5) year term.

7. **EXERCISE OF OPTION TO EXTEND.** So long as the same is not prohibited by the Master Lease, the City has not exercised any rights to terminate this Sublease, and Sublessee has faithfully and fully performed all terms and conditions of this Sublease, Sublessee shall have the right to extend this Sublease on the following terms and conditions:

a. **Notice.** Between one hundred eighty (180) days before and one hundred fifty (150) days before the termination date, Sublessee shall give the City written notice of its intent to extend this Sublease. Said notice shall be addressed and mailed in accordance with paragraph 31a of this Sublease.

b. **Rate Study.** Upon receipt of the notice , the City shall cause a rate study

to occur to determine the fair market rental for the extended term of the lease. The results of the said study shall determine the rental for the extended period of the lease. If there are costs associated with said study, Sublessee shall reimburse the City's costs.

c. **Terms and Conditions.** Except for the rental rate determined by the rate study, the remaining terms and conditions of this Sublease shall be in full force and effect during the extension period.

8. **EQUIPMENT TO BE ATTACHED.** Sublessee may attach to the antenna and structures only the equipment, connectors conduits and line expressly set out in **Exhibit A** (the "agreed equipment"). Said agreed equipment shall be installed in accordance with the plans and specifications set out in **Exhibit A**. The City may require that Sublessee submit an interference study to the City demonstrating that the agreed equipment will not cause interference with existing and contemplated equipment to use the premises. Sublessee may not use the premises for any other purpose.

9. **FACILITY FEE; RENT; ADDITIONAL RENT; OTHER CHARGES.** Sublessee agrees to pay the City, and where indicated third parties, fees, rent, additional rent and other charges as follows:

a. **SERS Siting Fee.** Unless waived or modified by SERS, Sublessee agrees to pay a siting fee to SERS in an amount set out in the General Terms and Conditions to the Master Lease. As currently drafted the General Terms and Conditions limit said fee to not exceed \$12,500. Said fee shall be paid upon execution of this Sublease.

b. **City Siting Fee.** Because Sublessee is another Washington State governmental unit, City waives any City siting fee.

c. **Security Deposit.** Because Sublessee is another Washington State governmental unit, City waives any security deposit.

d. **Annual Base Rent.** Sublessee shall pay the City annual base rent in the amount of \$4,084.00. Annual base rent for the first year shall be due and payable on the commencement date. Annual base rent for subsequent years of this Sublease shall be due and payable on the anniversary of the commencement date. Should the City allow Sublessee to add to or change the equipment to be attached, any agreement addressing the addition to or change of equipment shall address adjustment of the annual base rent and any pro-ration to account for additions or changes in the middle of a lease year. At the option of Sublessee, the annual rent may be paid in 12 equal payments, the first due on December 1, 2009 with subsequent payments due on the first day of each succeeding month.

e. **Adjustment of Annual Base Rent.** The annual base rent shall be

adjusted 3 % per year beginning with the lease year commencing on the first anniversary of the commencement date.

f. **Insurance Cost.** If as a direct result of this Sublease the City's cost for any insurance shall increase, the City shall invoice Sublessee for the increased cost on the anniversary of the commencement date. Sublessee shall pay the City's invoice within thirty (30) days of the postmark on the City's mailing of the invoice. Said reimbursement shall be deemed to be additional rent. The City and Sublessee agree to challenge any insurance cost increase deemed unreasonable or outside prudent risk management practices.

g. **Utilities Cost.** If all of the utilities to Sublessee's equipment and facilities are not separately metered and billed to Sublessee, but the said utility is billed to the City and increases the City's cost for utilities, the City shall invoice Sublessee for the increased cost on the anniversary of the commencement date. Sublessee shall pay the City's invoice within thirty (30) days of the postmark on the City's mailing of the invoice. Said reimbursement shall be deemed to be additional rent.

h. **Tax Imposed on the City.** Should any tax be imposed on the City for or on account of this Sublease, or the City's receipt of payments under this Sublease, upon the City's payment of said tax, the City shall invoice sublessee for the tax imposed upon the City. Sublessee shall pay the City's invoice within thirty (30) days of the postmark on the City's mailing of the invoice. Said reimbursement shall be deemed to be additional rent.

i. **No Offset.** All charges under this lease are charges for rent. Tenant shall pay all rent under this lease without offset.

#### 10. **LATE PAYMENTS; INTEREST.**

a. **Late Charge.** If any rent, additional rent or other charge is not received by the City from Sublessee within ten (10) days of its due date, Sublessee shall immediately pay the City a late charge equal to five percent (5%) of the amount of the rent, additional rent or other charge. Payment of a late charge shall not be construed as a waiver of any other rights that the City may have under this Sublease.

b. **Interest.** In addition to all other charges, Sublessee shall pay to the City interest at the rate of one percent (1%) per month, or the maximum legal rate of interest, whichever is less, on any rent, additional rent, or other charge from any after the 10th day after the amount is due.

11. **TAXES.** Sublessee shall timely pay all taxes, real, personal or otherwise, if any which become due and payable for or on account of this Sublease or location of the agreed

equipment on the premises. Upon request, evidence of all such payments shall be provided to the City. Sublessee shall insure that no lien is imposed upon the premises and agrees to indemnify the City from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including without limitation reasonable fees and expenses of attorneys, expert witnesses, and consultants) which may be imposed upon, or incurred by City to address taxes owed by sublessee.

**12. USE OF THE CONNECTION AND STORAGE AREAS.**

a. **Installation.** Sublessee may use the connection and storage areas to install, maintain and operate the agreed equipment. This use shall be nonexclusive. Installation shall be done under the supervision of the City or its designee. The City may forbid installation of any material, even if part of the agreed equipment, if in the City's sole judgment, reasonably exercised, the material will damage the property or interfere with the rights of SERS, the City, or any present or prospective co-locator. All expenses of installation of Sublessee's equipment shall be at the sole cost and expense of Sublessee. Sublessee shall paint the color of its facilities as the City may direct.

b. **Compliance With Law; Waste.** Sublessee shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety) in connection with the use, operation, maintenance, construction and/or installation of equipment and use of the premises. Sublessee shall not permit, and shall not cause waste upon the premises.

c. **Removal.** The Sublessee shall remove its equipment and materials from the premises upon the termination of this Sublease at its own expense. 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 premises, including that of SERS, the City or any co-locator. If, however, Sublessee requests permission not to remove all or a portion of its equipment and materials, and the City consents to such non-removal, title to the affected equipment and materials shall thereupon transfer automatically as of the date of the request to the City and the same shall thereafter be the sole and entire property of the City and Sublessee shall be relieved of the duty to otherwise remove the same. If Sublessee is required to remove its materials and equipment, Sublessee shall restore the affected area of the premises to the reasonable satisfaction of the City. All costs and expenses of removal and restoration shall be borne by Sublessee and Sublessee shall hold the City harmless from any portion thereof.

**13. EQUIPMENT AND MATERIALS UPGRADE.** Sublessee may not replace or alter its materials, installation and equipment without the agreement of the City, including any required agreement for the adjustment of the annual base rent.

**14. MAINTENANCE.**

a. Sublessee shall, at its own expense, maintain any equipment on or attached to the premises in a safe condition, in good repair and in a manner suitable to the City so as not to conflict with the use of or other leasing of the premises by the City. Sublessee shall not interfere with the use of the antenna, the premises, related facilities or other equipment of SERS and any co-locators.

b. Sublessee shall have sole responsibility for the maintenance, repair and security of its equipment and personal property and sub-leasehold improvements and shall keep the same in good condition and repair during the sublease term.

c. Sublessee 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.

d. Should the City, SERS or a co-locator undertake painting, construction or other alterations on the antenna, Sublessee shall take reasonable measures at Sublessee's sole cost to cover and/or protect Sublessee's equipment, personal property or materials.

**15. LIENS.** Sublessee acknowledges that the City and the premises may not, and shall not, be subject to claims for liens for labor and materials, and shall keep the premises and any other property of the City free from any liens for work, labor, materials or services delivered to Sublessee, or claimed by or through Sublessee. Sublessee shall indemnify, defend and hold the City harmless from and against any such claims or liens and the City's attorney's fees and costs incurred in connection therewith.

**16. PREMISES ACCESS.**

a. Sublessee at all times during this Sublease, subject to notice requirements to the City as set out below, and subject to rules that SERS and/or the City may from time to time implement and issue, shall have vehicle access through existing gates and driveways to the antenna and premises.

b. Sublessee shall request access to the premises twenty-four (24) hours in advance, except in an emergency.

c. The City may at all times enter upon those portions of the premises occupied by Sublessee to examine and inspect the premises for safety and to ensure that the Sublessee is complying with the provisions of this Sublease.

**17. UTILITIES.** Unless separate metering is not available, Sublessee shall arrange for separate metering of its utilities associated with its use as permitted by this Sublease.

Sublessee shall pay all costs associated with arranging for said metering and Sublessee shall pay all utility charges as and when they come due. Sublessee may not install an emergency power generator or alternate power system on the premises without the consent of the City. The City in its sole discretion may refuse to grant consent. Should the City consent, and an emergency generator or alternate power system is installed by Sublessee, the system shall conform to all fire prevention regulations of the fire district, all requirements of the Public Utility District No. 1 of Snohomish County, and all regulations of any other agency with jurisdiction. The City shall not be liable for the interruption of utility services or failure of emergency power or any damages or losses resulting from such interruption or failure.

18. **LICENSE FEES.** Sublessee shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and permits required for or occasioned by Sublessee's use of the premises.

19. **INTERFERENCE.** Sublessee's installation, operation, and maintenance of the agreed equipment shall not damage or interfere in any way with SERS's operations, the City's operations or the operation of other co-locators. Sublessee agrees to immediately cease upon actual notice activities which materially interfere with other operations. The City at all times during this Sublease reserves the right to take any action it deems necessary in its sole discretion to repair, maintain, alter or improve the premises.

The City may at any time, at Sublessee's expense, obtain an interference study to determine if Sublessee's activities interfere with the use and operation of other communication facilities on the antenna which pre-existed Sublessee's agreed equipment. If Sublessee's agreed equipment causes interference, Sublessee shall take all measures reasonably necessary to correct and eliminate the interference. If the interference cannot be eliminated in a reasonable time, Sublessee shall immediately cease operating its equipment until the interference has been eliminated. If the interference cannot be eliminated within thirty (30) days, the City may terminate this Sublease.

The City may receive requests to sublease to co-locators. If after installation of Sublessee's agreed equipment the City proposes to enter into a sublease with a co-locator, the City will advise Sublessee of the proposal, and the City will supply Sublessee with such information as the third party will provide for review for noninterference. Sublessee shall have thirty (30) days to review and comment on the information supplied. If Sublessee does not object in writing within the said thirty (30) days, then Sublessee shall be deemed to have consented to the co-location and shall be conclusively deemed to have agreed that the proposal will not cause interference with Sublessee's agreed equipment and operation. If Sublessee timely objects, and the City verifies the objection, the City will not proceed with the proposal, unless the proposal is reasonably modified to avoid interference.

Notwithstanding the provisions of the previous paragraph, the City does not guarantee to Sublessee subsequent noninterference with Sublessee's agreed equipment. Further, regardless of

the provisions of the previous paragraph, the City itself, SERS, or any governmental unit may be allowed to operate or place facilities on the antenna regardless of actual or potential interference with Sublessee's use. In such event, Sublessee may terminate this sublease on thirty (30) days notice to the City.

**20. INSURANCE.**

a. Sublessee shall procure and maintain during the duration of this Sublease insurance against claims for injuries to persons or damage to property which may arise from or in connection with Sublessee's operation and use of the subleased premises in an acceptable form, at least as broad as, and not less than the following:

i. Commercial General liability insurance in the minimum combined single limit of \$5,000,000. Said insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability.

ii. Property insurance covering the full value of Sublessee's property and improvements with no co-insurance provisions. Property insurance shall be written on an all risks basis.

b. The Commercial General Liability Insurance shall specify that Sublessee's insurance is primary insurance as respect the City. Any insurance, self-insurance or insurance pool coverage of the City shall be excess coverage to the Sublessee's insurance and shall not contribute with it. Sublessee's insurance shall be endorsed to state that coverage will not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested has been give to the City. Insurance is to be placed with insurers with a current A.M. Best rating of not less that A: VII. Sublessee shall provide the City with evidence of insurance including certificates of insurance as the City may from time to time request.

c. Sublessee may satisfy the insurance obligations by maintaining a self insurance program. Sublessee maintains a fully funded self-insurance program as provided in King County Code 4.12 for the protection and handling of the Sublessee's liabilities including injuries to persons and damage to property. City acknowledges, agrees and understands that the Sublessee is self-funded for all of its liability exposures. Sublessee agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Sublease. The Sublessee agrees to provide the City with at least 30 days prior written notice of any material change in the Sublessee's self-funded program and will provide the City with a certificate of self-insurance as adequate proof of coverage. City further acknowledges, agrees and understands that the Sublessee does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the Sublessee does not have the ability to add the City as an additional insured.



Should the Sublessee elect cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Sublessee agrees to add the City as an additional insured.

d. The City and Sublessee hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

21. **INDEMNIFICATION.** Except for the sole negligence of the indemnitees, Sublessee shall, at its sole cost and expense, indemnify and hold harmless the City, its elected officials, Council members, employees and agents. (collectively "Indemnitees") from and against:

a. Any and all liability, damages, penalties, claims, liens, costs, charges, losses and expenses (including without limitation reasonable fees and expenses of attorneys, expert witnesses and consultants) which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any negligent act or omission of Sublessee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible and intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, reconstruction, remodel, revision, installation, operation, maintenance, use of, condition of the premises, Sublessee's agreed equipment, or Sublessee's failure to comply with any federal, state, or local statute, ordinance or regulation.

b. Any and all liabilities, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation reasonable fees and expenses of attorneys, expert witnesses and other consultants) which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplied provided to or supplied to Sublessee, its contractors or subcontractors for the installation, construction, operation, maintenance or use of the premises or Sublessee's agreed equipment, and upon request of City sublessee shall immediately cause any claim against the premises to be released and discharged. Sublessee may alternatively simultaneously contest any aforementioned lien and post with the City a bond in lieu of satisfaction of the contested lien in accordance with RCW 60.04.161.

The indemnity provided for herein shall remain in full force and effect despite the negligence of the Indemnitees. Sublessee shall have no obligation to defend and/or indemnify the City for the sole negligence of the Indemnitees. This indemnity shall survive any termination

of this Sublease.

Sublessee hereby waives, as to the City only, the immunity of the Industrial Insurance Provisions of RCW Title 51, but only for the sole purpose and only to the extent necessary to indemnify the City as provided for in this paragraph 21. This waiver has been mutually negotiated by the parties.

22. **RELEASE OF CLAIMS.** Except for damages arising out of the negligent maintenance of the premises, Sublessee hereby releases the City for all claims for property damage which may arise from defects in the antenna and related structures on the premises, or which may arise from the existing or future water storage tank and appurtenances on the premises, or for damage by storm, rain, leakage or any natural occurrence.

23. **HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.**

a. **Definitions.** "Hazardous Materials" as used in this Sublease shall mean:

i. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease producing substances; or

ii. Any dangerous waste or hazardous waste as defined in:

(a) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105);

(b) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq); or

iii. Any hazardous substance as defined in:

(a) Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (43 U.S.C. Sec. 9601 et seq); or

(b) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

iv. Any pollutants, contaminants or substances posing a danger or threat to public health, safety or welfare or to the environment, which are regulated or controlled as such by applicable federal, state or local laws or regulations as now existing or hereafter amended.

**b. Environmental Compliance.**

i. In the use and occupancy of the Premises, the Sublessee shall, at the Sublessee's own expense, comply with all federal state and local laws and regulations now or hereafter in effect related to hazardous materials and the environment which are applicable to the premises, Sublessee's business or any activity or condition on or about the premises (the "environmental laws"). The Sublessee warrants that its business and all its activities to be conducted or performed in, or about the premises shall comply with all of the environmental laws. The Sublessee agrees to change, reduce, or stop any noncomplying activity or install necessary equipment, safety devices, pollution control systems or other installations as may be necessary at any time during the term of this sublease to comply with the environmental laws.

ii. The Sublessee shall not, without first obtaining the City's prior written approval, use generate, release, handle, spill, store, treat, deposit, transport, sell or dispose of any hazardous materials in, on or about the premises. In the event, and only in the event, that the City approves any of the foregoing, the Sublessee agrees that such activity shall occur safely and in compliance with the environmental laws.

iii. The Sublessee shall not cause or permit to occur any violation of the environmental laws on, under, or about the premises, or arising from the Sublessee's use or occupancy of the premises.

iv. The Sublessee, at its own expense, in a timely manner shall make all reports, including self reports, and supply all submissions required to comply with all environmental laws. If the Sublessee shall fail to fulfill this duty, at its option the City may fulfill such reporting requirements, and bill the cost thereof to Sublessee as if the same was additional rent, or the City may employ the default provisions of this Sublease. All of the City's remedies shall be cumulative, and the exercise of one remedy shall not be deemed to be a waiver or release of any other remedy. Sublessee's environmental obligations shall survive a termination of this Sublease.

v. Should any governmental or regulatory authority demand that a cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any action of Sublessee whereby a deposit, spill, discharge or other release of hazardous materials occurs during the term of this Sublease, then Sublessee shall, in a timely manner and at the Sublessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances and Sublessee shall then carry out all such cleanup and remediation plans at its own expense. Any such cleanup and remediation plans are subject the

City's prior written approval. Although the City reserves the right to review and approve such cleanup and remediation plans, the City assumes no responsibility for such plans or their compliance with the environmental laws.

c. **Environmental Indemnity.** The Sublessee shall be fully and completely liable to the City for, and shall fully save and indemnify the City from, any and all cleanup and/or remediation costs and expenses and any and all other charges, expenses, fees, penalties (civil and criminal) imposed by any governmental or regulatory authority arising out of the Sublessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of hazardous materials on or about the premises. In addition, Sublessee shall indemnify and save the City harmless from any and all claims, liabilities, lawsuits, damages and expenses, including reasonable attorney's fees for injuries to persons or death, property damage, loss or costs caused by the Sublessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of hazardous materials by the Sublessee. For the purposes of this paragraph, "Sublessee" shall be construed to mean Sublessee, or any of its agents, representatives, employees or contractors. This indemnity shall survive the termination of this Sublease.

d. **Remediation on Lease Termination.** Upon expiration or earlier termination of this Sublease, Sublessee shall remove, remediate or clean up any hazardous materials on or emanating from the premises, occasioned by Sublessee, and Sublessee shall undertake whatever other action may be necessary to therefore bring the premises into full compliance with environmental laws. Sublessee shall submit its plan of cleanup to the City for review and approval. Notwithstanding review and approval by the City, the City assumes no responsibility for any plan of cleanup, or for Sublessee's compliance with environmental laws. If Sublessee does not timely proceed with a plan of cleanup, the City may supply Sublessee with a notice of default, and if within the deadline specified in the notice, Sublessee does not make reasonable progress, the City thereafter may proceed with cleanup as necessary and bill all of the City's costs, including costs of investigation and reporting, to Sublessee.

24. **NON-DISCRIMINATION.** The City and Sublessee shall not discriminate on the basis of race, color, sex, religion, nationality, creed, age or the presence of any sensory, mental or physical disability in the employment or application for employment in the administration or delivery of services or any other benefits associated with this Sublease. The parties shall, to the extent applicable, comply with all laws against discrimination including but not limited to Chapter 49.60 RCW and Titles VI and VII of the Civil Rights Act of 1964.

25. **SIGNS.** No advertising shall be permitted on the premises except as required by law or regulation. Sublessee may post its name, address and an emergency number on a painted sign, provided the design, size and location meet applicable codes and the sign is approved in advance in writing by the City.

26. **DEFAULT AND TERMINATION FOR DEFAULT.** It shall be a default if Sublessee shall fail to fully and timely make any payment under this Sublease or fail to fully and timely perform as required by this Sublease. In the event of a default, the City may give Sublessee a notice of default as follows:

- a. for nonpayment of rent, a ten (10) day notice to pay or vacate;
- b. for any other nonperformance under the lease a twenty (20) day notice to comply or vacate, except where the cure necessitates more than twenty (20) days in which case Sublessee's failure to initiate the cure within the notice period and prosecute such cure to completion shall constitute a default hereunder.

If Sublessee does not pay or cure its performance within the deadline specified by the notice the City, at its option, may without further notice re-enter the premises and eject Sublessee from the premises. At its option, the City may also (1) declare in writing the sublease terminated, in which event Sublessee shall immediately remove the agreed equipment from the premises and pay the City a sum of money equal to the total amount of unpaid rent accrued through the date of termination, the amount of rent remaining to be paid on the Sublease reduced by that amount the Sublessee proves could have been reasonably mitigated, and the City's costs, including reletting costs and reasonable attorney's fees, or (2) without terminating this Sublease, relet the premises, or any part thereof, for the account of the Sublessee upon such terms as the City deems advisable, and if a deficiency remains compared to the reserved rent and the City's reletting costs and reasonable attorney's fees, and invoice and collect the shortage from sublessee, or (3) pursue any other remedy permitted at law or in equity.

No re-entry and taking possession of the premises by the City shall be construed as an election on the City's part to terminate this Sublease, regardless of the extent of renovation or alterations by the City, unless the City declares in writing that this Sublease is terminated. Notwithstanding any reletting without termination, the City may at any time thereafter elect to terminate this Sublease for such previous breach.

27. **COSTS AND ATTORNEY'S FEES.** If a legal or equitable action is instituted by reason of any default or breach of this Sublease, or because of a dispute concerning the terms and provisions of this Sublease, the prevailing party shall be entitled to recover all of its legal costs, expert witness and consultant fees, and reasonable attorney's fees.

28. **VENUE AND CHOICE OF LAW.** This Sublease shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any action brought under the terms of this Sublease shall be in the Snohomish County Superior Court.

29. **OPTIONAL RIGHTS TO TERMINATE.** Even though no party may be in default under the terms of this Sublease, the City and Sublessee, upon giving notice as specified,

shall have optional rights to terminate this Sublease as follows:

- a. **Failure of Precondition.** Without any notice, that party for whom a precondition is specified elsewhere in this Sublease, and the remedy of termination is granted, may declare this Sublease null and void for the failure of a precondition in its favor.
- b. **Damage or Destruction.** Upon thirty (30) days written notice, one to the other, in the event that the antenna, or Sublessee's agreed equipment, is substantially damaged or destroyed, either party may declare this sublease terminated.
- c. **Insolvency.** Without notice, upon Sublessee being the subject of a bankruptcy filing, the City may declare this Sublease terminated.
- d. **Passage of Law or Regulation.** Should the State or Federal government by statute, regulation or decision require the City, because it has entered into this Sublease, to allow other co-locators on the antenna and premises, then the City upon thirty (30) days written notice to Sublessee may declare this Sublease terminated.
- e. **Antenna Unsound.** Upon thirty (30) days written notice from the City to Sublessee, in the event that the antenna, as determined by the City in its sole discretion, is determined to be structurally unsound or otherwise not suitable for Sublessee's use.
- f. **Redevelopment.** Upon thirty (30) days written notice from the City to Sublessee, in the event that the City determines, in its sole discretion, that the property should be redeveloped.
- g. **Health Hazard.** Upon thirty (30) days written notice from the City to Sublessee, in the event that the City determines, in its sole discretion, that the continued use of the antenna and related equipment is in fact a threat to the health, safety or welfare of local community.
- h. **King County Council Approval.** Sublessee's obligations to the City, if any, are contingent upon approval of this Sublease by the King County Council or appropriation by the King County Council at the time of execution of sufficient funds to pay such obligations. Should such approval not occur, Tenant shall have the unconditional right to terminate this Sublease for convenience with no further obligations hereunder.
- i. **Any Other Provision.** Upon such notice, and under such circumstances as other provisions of this Sublease set out.

30. **ASSIGNMENT OR SUBLEASE.**

a. **Prohibited Without Consent.** Sublessee shall not assign or transfer this Sublease or any interest or rights therein, nor delegate its duties under this Sublease, nor sub-sublease the whole or any part of the premises, nor grant an option for assignment, delegation, transfer or sub-sublease for the whole or any part of the premises, nor shall this Sublease or any interest thereunder be assignable, delegable or transferable by operation of law, or by any process or proceeding of any court or otherwise without obtaining the prior written consent of the City. If the City gives its consent to any assignment, delegation, sub-sublease or other transfer, the same shall not be a waiver, and this paragraph shall nevertheless continue in full force and effect, and no further assignment, delegation, sub-sublease or other transfer shall be made without the City's consent. All prohibited events under this paragraph are hereinafter referred to as "transfers," or "transfer."

b. **Notice by Sublessee — Production of Records.** If Sublessee desires to transfer this Sublease, Sublessee shall notify the City in writing of said desire to transfer at least ninety (90) days prior to the effective date of the proposed transfer. The notice shall specify the date of the proposed transfer, the identity of the transferee, and the terms of the proposed transfer, including all consideration of any kind to be received by the sublessee. Upon request by City, sublessee shall provide:

- i. a full and complete financial statement of the proposed transferee;
- ii. a copy of the proposed transfer instrument;
- iii. an affidavit from the transferee that it has examined the Master Lease, and all accompanying schedules and exhibits, and has examined this Sublease, has had an opportunity to consult with legal counsel, and understands the terms and conditions under which a transfer will be undertaken; and
- iv. any other information the City reasonably requests.

c. **Decision by the City.** The City shall review the request to transfer and respond with either an approval or disapproval not later than sixty (60) days prior to the effective date of the proposed transfer. Disapproval shall be final and binding on the Sublessee and shall not be subject to litigation or appeal. The City shall charge Sublessee a reasonable fee for administrative costs for the review and processing of a transfer. Said fee shall be due and payable upon invoice from the City to Sublessee.

d. **Effect of Transfer.** Should the City consent to a transfer, the transferee shall be fully bound to this Sublease and the Master Lease. Despite consent by the City and a permitted transfer, Sublessee and any subsequent transferor shall not be released,

but shall also be fully bound to and obligated to payment and performance under this Sublease.

31. **NOTICES.** Except for notices required under Chapter 59.12 RCW, notices required under this Sublease shall be given in writing to the following respective addresses, effective as of the postmark time and date, or to such other place as may hereafter be designated by either party in writing:

a. if to City, to:

The Chief Administrative Officer  
City of Marysville  
1049 State Avenue  
Marysville WA 98270

b. if to sublessee, to

King County Radio Communications Services Manager  
6452 South 144<sup>th</sup> Street  
Tukwila, WA 98168

32. **HOLDING OVER.** If Sublessee holds over after the expiration of the term of this Sublease or any extension thereof, Sublessee, if the Master Lease has not expired, shall become a subtenant from month to month upon the terms of this Sublease as applicable. Acceptance by the City of rent after such expiration or early termination shall not result in a renewal of this Sublease, or waiver of any early termination, and shall not affect the City's right of reentry or any other rights the City may have. If Sublessee fails to surrender possession of the premises upon expiration of this Sublease, despite demand to do so, as provided for by law, Sublessee shall pay two (2) times the rent herein specified (prorated on a monthly basis), interest, attorney's fees and costs as specified in this Sublease.

33. **NO PRESUMPTION AGAINST DRAFTER.** Sublessee and City agree that this Sublease has been freely negotiated by the parties, and in the event of any dispute concerning the meaning or interpretation of the terms and conditions of this Sublease, there shall be no inference, presumption or conclusion drawn against the City for or on account that the City or its legal counsel have prepared this Sublease.

34. **CAPTIONS.** The captions of this Sublease are for convenience only and do not in any way limit or amplify the provisions of this Sublease.

35. **AUTHORITY.** Sublessee covenants and represents that it has full authority and power to execute this Sublease, and that by execution of this Sublease it will not violate any provision of law or contract and that Sublessee will be fully bound to full payment and



performance under the terms of this Sublease.

36. **CUMULATIVE REMEDIES.** No provision of this Sublease shall preclude the City from pursuing any other remedies the City may have for or on account of Sublessee's failure to perform its obligations.

37. **NONWAIVER.** The failure of the City to insist upon strict performance of the terms of this Sublease shall not be construed as a waiver by the City of strict performance. Waiver of a particular default shall not be deemed to be a waiver of any subsequent breach or default.

38. **SURRENDER OF PREMISES.** At the end of the term of this Sublease, besides performance of specific removal and remediation covenants provided for elsewhere in this Sublease, and subject to those covenants, Sublessee shall peaceably deliver up to the City possession of the premises in the same condition as received, except for ordinary wear and tear.

39. **INTEGRATION; FULL AGREEMENT.** This Sublease is intended as a full and final expression of the agreement between the parties. All prior discussions, statements, representations, and warranties are integrated and merged into this agreement. There are no agreements between the parties, and there are no representations on which either party relies except as set forth in this Sublease.

DATED: \_\_\_\_\_

DATED: 5/12/10

CITY OF MARYSVILLE

SUBLESSEE:

By Dennis L Kendall  
DENNIS KENDALL, Mayor

By John W. Sage  
Its Manager, Local Estate Services

ATTEST:

By Joey Light, City Clerk

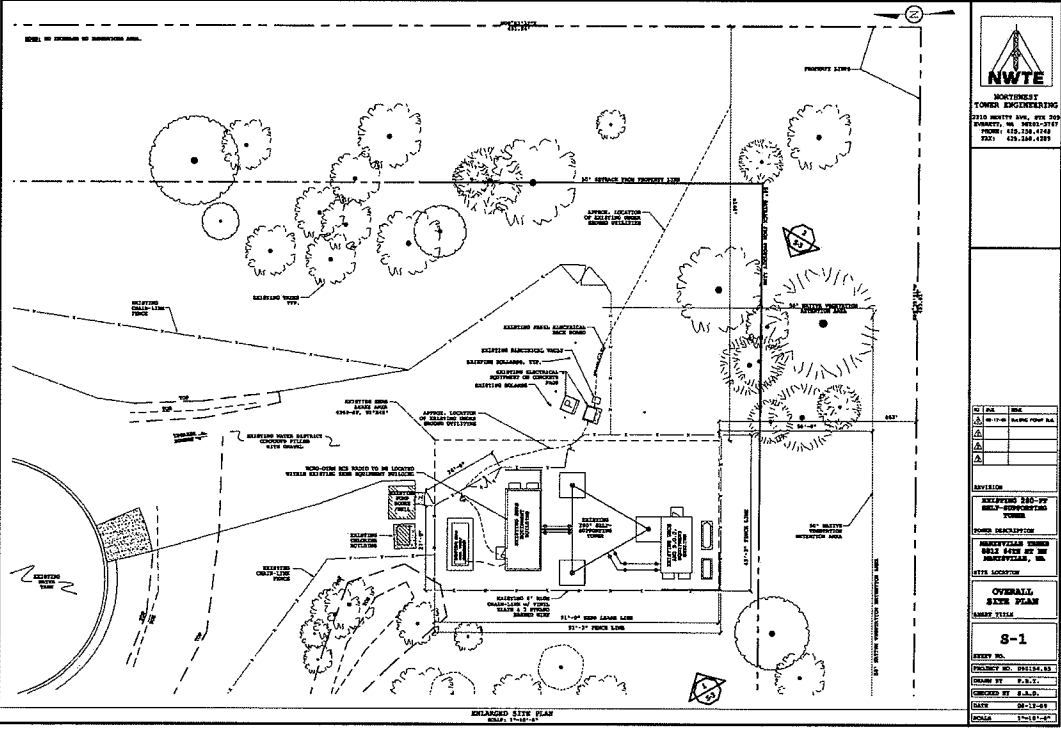
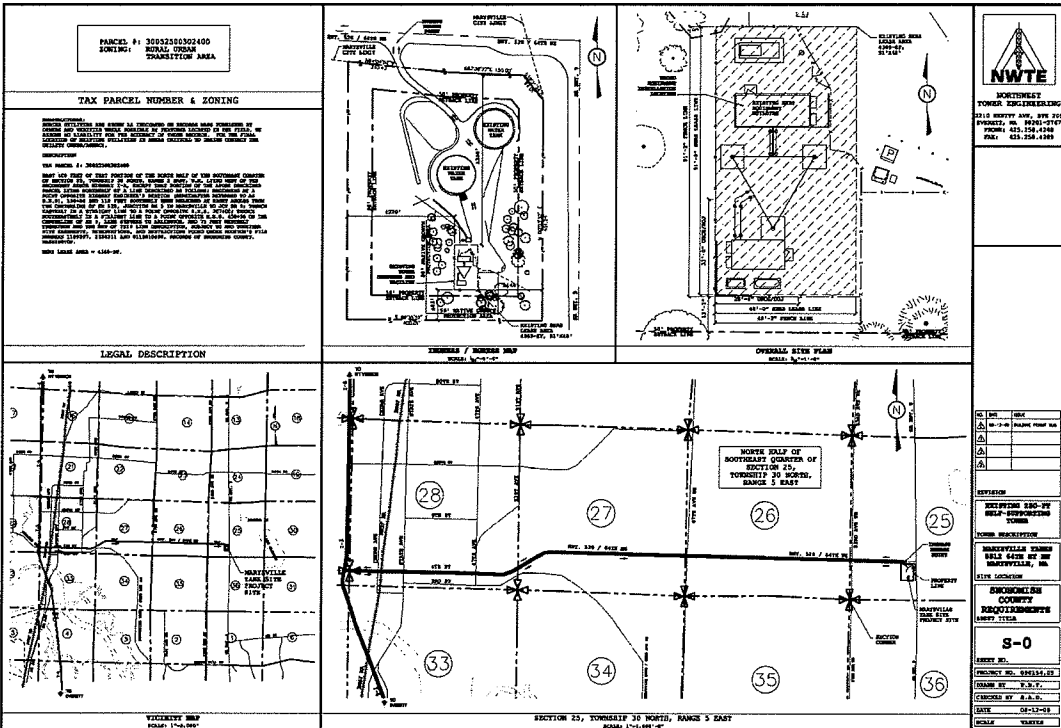
Approved as to form:

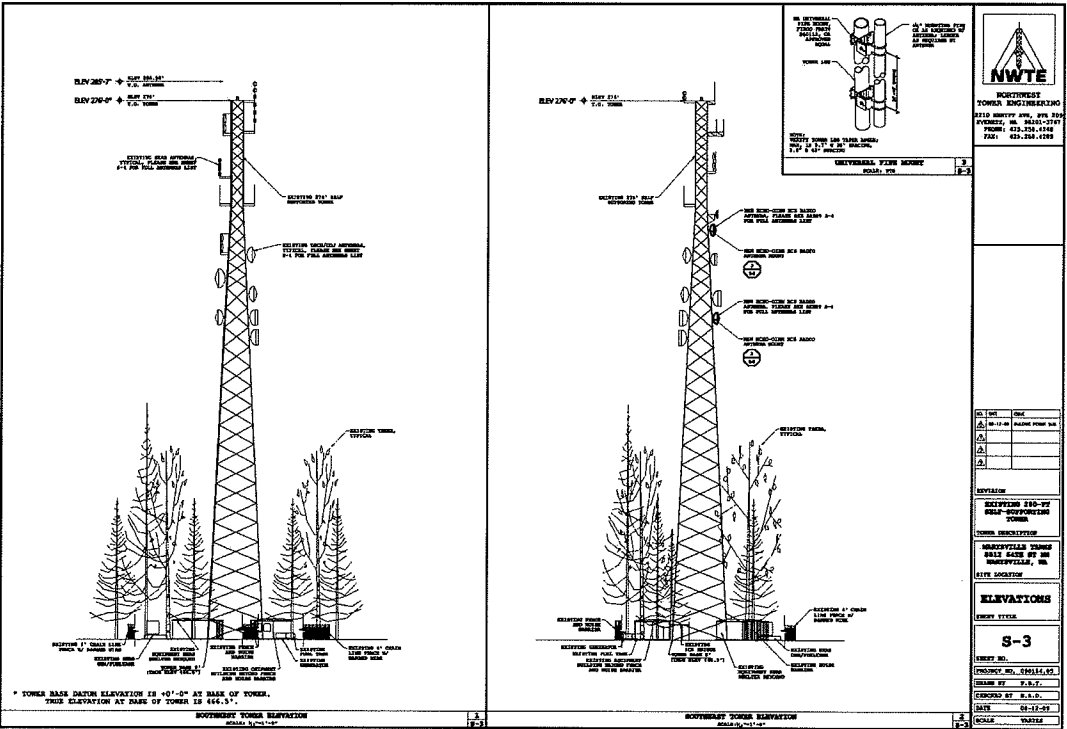
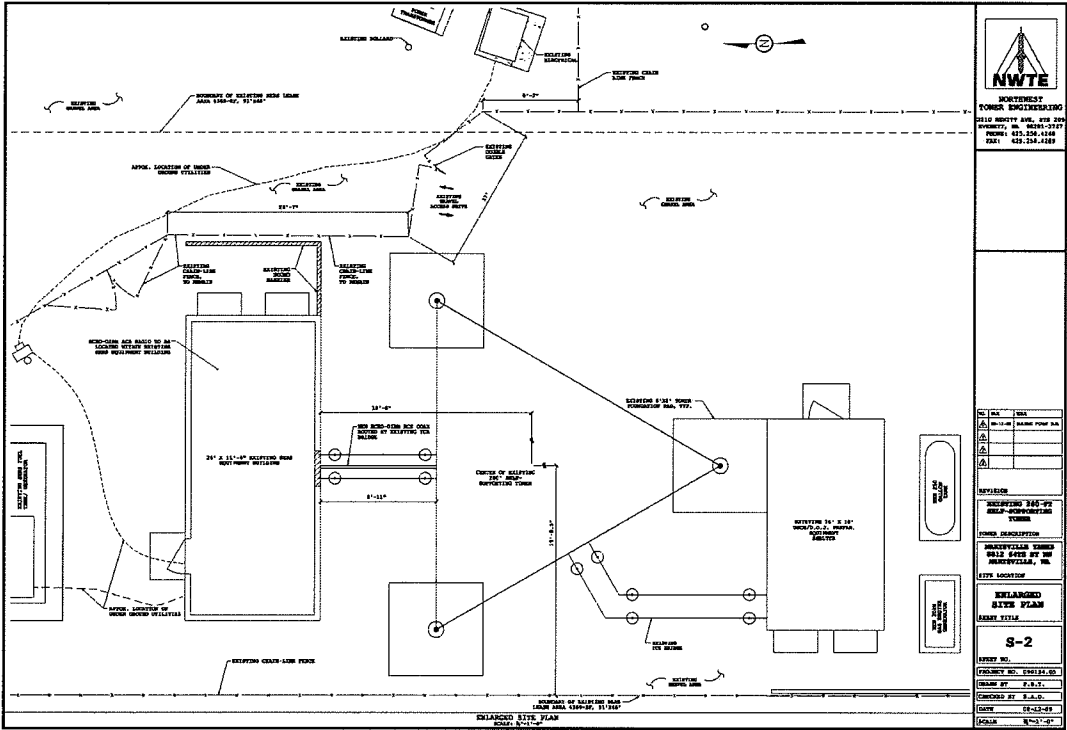
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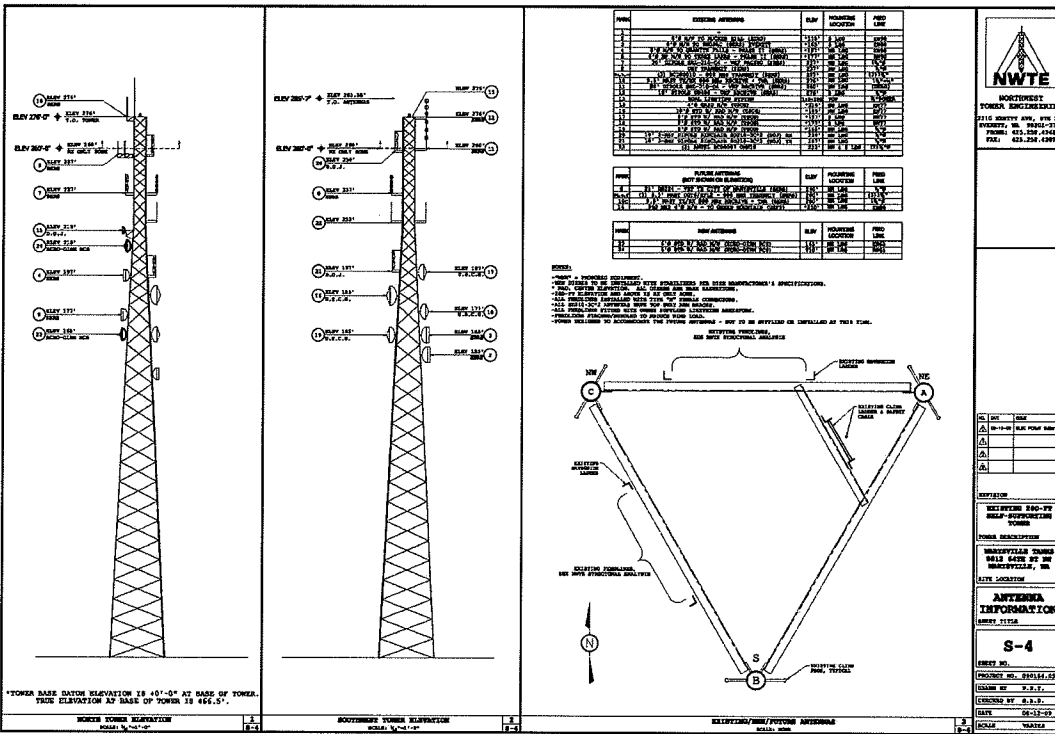
By Grant K Weed  
GRANT K. WEED, City Attorney

By [Signature]  
5/27/10, Attorney









**NWTE**  
**NOVEMBER**  
**TOWER ENGINEERING**  
 2116 NORTH HWY. 400 270  
 PROPERTY, WA 98003-2177  
 PHONE: 425-338-0348  
 FAX: 425-338-0397

**REVISION**

NO.	DATE	DESCRIPTION
1	11-18-09	REV FOR PERM
2		
3		
4		
5		

**PROJECT DESCRIPTION**  
 TOWER DESCRIPTION  
 WASHINGTON STATE  
 2116 NORTH HWY. 400  
 PROPERTY, WA  
 98003-2177

**CITY LOCATION**  
 WASHINGTON STATE  
 2116 NORTH HWY. 400  
 PROPERTY, WA  
 98003-2177

**ANTENNA INFORMATION**  
 ANTENNA  
 INFORMATION  
 SHEET TITLE  
**S-4**

**DESIGN NO.**  
 PROJECT NO. 09164.09  
 DRAWN BY: J.S.P.  
 CHECKED BY: J.S.P.  
 DATE: 06-15-09  
 SCALE: VARIOUS