



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**Ordinance 19588**

**Proposed No. 2023-0088.1**

**Sponsors McDermott**

1                   AN ORDINANCE authorizing the execution of a sublease  
2                   to support the operation of the Metro transit department.

3                   STATEMENT OF FACTS:

4                   For the sublease from the Puget Sound Emergency Radio Network  
5                   Operator, property located at 6805 South 124th Street, Seattle, within  
6                   council district two, the facilities management division determined that  
7                   there was not an appropriate county-owned option and successfully  
8                   negotiated to sublease space.

9                   BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10                  SECTION 1. The executive is authorized to execute a sublease for the property  
11                  located at 6805 South 124th Street, Seattle, with the Puget Sound Emergency Radio

Ordinance 19588


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- 12 Network Operator, substantially in the form of Attachment A to this ordinance, and to
- 13 take all actions necessary to implement the terms of the sublease.

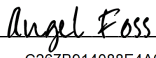
Ordinance 19588 was introduced on and passed by the Metropolitan King County Council on 4/4/2023, by the following vote:

Yes: 9 - Balducci, Dembowski, Dunn, Kohl-Welles, Perry, McDermott, Upthegrove, von Reichbauer and Zahilay

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

DocuSigned by:  
  
 E76CE01F07B14EF...  
 Dave Upthegrove, Chair

ATTEST:

DocuSigned by:  
  
 C267B914088E4A0...  
 Melani Pedroza, Clerk of the Council

APPROVED this \_\_\_\_\_ day of 4/12/2023, \_\_\_\_\_.

DocuSigned by:  
  
 4FBCAB8196AE4C6...  
 Dow Constantine, County Executive

**Attachments:** A. Sublease Agreement

**ATTACHMENT A:**

**SUBLEASE AGREEMENT**

King County Sublease #: PSErn-10b  
King County Sublease Name: Skyway KC METRO Sublease  
King County Site Name: Skyway

**COMMUNICATIONS SITE SUBLEASE AND ACCESS AGREEMENT  
BETWEEN KING COUNTY  
AND  
PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR**

**THIS COMMUNICATIONS SITE SUBLEASE AND ACCESS AGREEMENT (“Sublease”)** is made by and between KING COUNTY, a home rule charter county and political subdivision of the State of Washington, having offices for the transaction of business at [TBD], Seattle, Washington 98104, hereinafter referred to as “**Sublessee**,” and PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR, a governmental agency formed under RCW 39.34.030(3)(b) and organized as a Washington nonprofit corporation, having offices for the transaction of business at [TBD], hereinafter referred to as “**Sublessor**.” Sublessor and Sublessee may jointly be referred to herein as the “**Parties**” or individually, a “**Party**.” This Sublease shall be effective on the Term Commencement Date (defined in Section 2(a) herein below).

- A. **WHEREAS**, Sublessor is the owner of certain emergency communication facilities on, and has lawful control over a portion of the real property located at 6805 South 124<sup>th</sup> Street, Seattle, Washington 98178 (APN: 781280-1870), which real property is legally described on the attached **Exhibit A** (“**Property**”); and
- B. **WHEREAS**, Sublessee desires to sublease from Sublessor a portion of Sublessor’s Site (defined in Section 1(a)) to continue operation and maintenance of its communication facility and associated equipment, as well as obtain the rights from Sublessor to access the Site and use Sublessor’s power and backup power generator located thereon in conjunction therewith; and
- C. **WHEREAS**, the Site is used by Sublessor for emergency radio communications, among other things, and Sublessee’s use of the Site is not anticipated to interfere with that use; and
- D. **WHEREAS**, King County Code Section 4.56.140 and RCW 36.34.130 authorize Sublessee to lease or dispose of real property to another governmental agency by negotiation, upon such terms as may be agreed upon and for such consideration as may be deemed by Sublessee to be adequate, and pursuant to such authority Sublessee desires to enter into this Sublease with Sublessor for Zero Dollars (\$0) cash rent in exchange for Sublessee having leased other separate property to Sublessor for Zero Dollars (\$0) cash rent under a separate instrument.

**NOW THEREFORE**, for and in consideration of the mutual promises set forth hereinafter and as provided for in the above-referenced recitals, which are made a part of this Sublease, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby agree:

**1. PREMISES; AS-IS CONDITION.**

(a) Pursuant to that certain Radio Site Lease and Access Agreement fully executed on May 8, 2018, as may be amended (collectively, the “**Prime Lease**”), a copy of which is attached hereto as **Exhibit E**, Sublessor leases approximately nine hundred ten (910) square feet of the Property from Skyway Water and Sewer District, the owner of the Property (“**Owner**”), for the installation and operation of Sublessor’s communication facilities, including but not limited to an equipment shelter (“**Shelter**”), backup power generator and one hundred seventy (170) gallon fuel storage (day) tank (collectively, the “**Generator**”), and a communications tower (“**Tower**”). Sublessor’s leased area, which is described and/or depicted in **Exhibit A**, together with its Tower, Generator and Shelter, are collectively referred to herein as the “**Site**.”



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King County Site Name: Skyway

(b) Sublessor hereby subleases to Sublessee: (i) approximately eighty-six (86) square feet of ground space on the Site for a one thousand (1,000) gallon above-ground fuel storage tank; (ii) approximately one hundred forty-four (144) square feet of space within the Shelter; and (iii) space on the Tower (“**Antenna Space**”). The ground space and Shelter space are collectively referred to herein as the “**Equipment Space**.” The Equipment Space and the Antenna Space shall be used by Sublessee exclusively for placement of its Communication Facilities (defined in Section 4 below). In addition, Sublessor hereby grants Sublessee the non-exclusive right to use Sublessor’s (x) electricity service, including but not limited to backup power from Sublessor’s Generator, and (y) easements on, under and across the Property for Sublessee’s access and utilities, as more specifically described in Sections 5 and 6 herein below. Sublessee’s Antenna Space, Equipment Space, and access and utility routes are more specifically described and/or depicted on the attached **Exhibit B** (collectively, the “**Premises**”).

(c) THE PARTIES ACKNOWLEDGE AND AGREE THAT FOR ALL PURPOSES AND IN ALL RESPECTS, THIS SUBLEASE IS SUBJECT AND SUBORDINATE TO THE TERMS, COVENANTS AND CONDITIONS OF THE PRIME LEASE AND THAT IN THE EVENT OF A CONFLICT BETWEEN THE PRIME LEASE AND THIS SUBLEASE, THE PRIME LEASE SHALL CONTROL. THE PARTIES AGREE TO STRICTLY COMPLY WITH ALL TERMS, COVENANTS AND CONDITIONS OF THE PRIME LEASE THAT ARE APPLICABLE TO THEIR USE AND OCCUPANCY OF THE PREMISES AND THE SITE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SUBLEASE, THE TERM (DEFINED IN SECTION 2) OF THIS SUBLEASE SHALL AUTOMATICALLY TERMINATE UPON THE EXPIRATION OR EARLIER TERMINATION OF THE PRIME LEASE.

(d) Sublessor makes the Site and the Premises available to Sublessee and Sublessee hereby accepts the Premises on an “AS IS” and “WHERE IS” basis, without any warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Sublessor, or any person on behalf of Sublessor, regarding the Site or the Premises or any matter affecting the Site or the Premises, other than as described in Sections 10(a) and 24 below. Sublessee may obtain, at its sole cost and expense, a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Site surveyed by a surveyor of its choice. Sublessee may also perform and obtain, at Sublessee’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigations or other tests or reports on, over, and under the Site, necessary to determine if Sublessee’s use of the Premises will be compatible with Sublessee’s engineering specifications, system, design, operations or Government Approvals (defined in Section 4(b) below); provided that Sublessee shall not perform any invasive testing that may require mandatory reporting to a government agency without obtaining Sublessor’s prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned. Provided further, if Sublessee must conduct any invasive testing in order to comply with applicable Environmental Laws (defined in Section 10(d) below) for its continued use of the Communication Facilities, or to comply with the terms of Section 10 below, then Sublessee shall have the right to do so without first obtaining Sublessor’s prior written consent, but shall provide Sublessor notice thereof prior thereto.

## 2. TERM.

(a) The “**Initial Term**” of this Sublease shall be for a period of twenty (20) years, commencing on the later of (i) execution of that certain separate bulk asset transfer agreement between the Parties, (ii) full system acceptance of the Puget Sound Emergency Radio Network (“**PSERN**”) by Sublessor from Motorola, and (iii) the last date this Sublease is signed by an authorized Party representative (“**Term Commencement Date**”), and terminating on the twentieth anniversary of the Term Commencement Date, unless terminated sooner as provided herein.

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(b) Sublessee shall have the right to extend the term of this Sublease for an additional two (2) periods of five (5) years each (each an “**Extension Term**”), subject to the following terms and conditions:

(i) That at the beginning of the Extension Term, Sublessee shall not be in default in the observance or performance of any of the material terms, covenants or conditions of this Sublease with respect to a matter as to which written notice of default has been given and which has not been remedied within the applicable cure period set forth in this Sublease.

(ii) That such Extension Term shall be upon the same terms, covenants and conditions as in this Sublease except for any mutually agreed changes.

(iii) Each Extension Term shall be exercised automatically unless Sublessee delivers to Sublessor a written notice of termination at least one hundred eighty (180) days prior to the end of the Initial Term or then-current Extension Term.

(c) As used in this Sublease, all references to the “**Term**” of this Sublease shall include the Initial Term, all exercised Extension Terms, and all holdover terms, as provided for in Section 28(k) herein below.

### 3. CONSIDERATION.

(a) In consideration for Sublessor’s agreement to enter into this Sublease, Sublessee shall grant Sublessor the reciprocal right to lease from Sublessee a portion of the real property and/or improvements located thereon owned and/or managed by Sublessee located at 10900 Squak Mountain Road South, Issaquah, County of King, State of Washington 98027 (“**Squak Mountain Property**”), for the purpose of installing and operating communication facilities, which reciprocal lease shall be referred to herein as the “**Squak Mountain Lease**.”

(b) For so long as Sublessor is the tenant under the Squak Mountain Lease and the Squak Mountain Lease remains in full force and effect, Sublessee shall not pay Sublessor any monetary rent hereunder. If the Squak Mountain Lease terminates prior to the effective expiration or earlier termination date of this Sublease, or if Sublessor is no longer the tenant under the Squak Mountain Lease, then within a reasonable period of time thereafter (but not more than twelve (12) calendar months from the effective date of termination of the Squak Mountain Lease or the date Sublessor is no longer the tenant under the Squak Mountain Lease) the Parties shall amend this Sublease to provide for Sublessee to pay reasonable rent as mutually negotiated by the Parties plus two percent (2%) annual rent increases. If the Parties are unable to agree on rent, then they shall enter into dispute resolution consistent with Section 21 of this Sublease. Sublessee’s duty to pay monetary rent shall be retroactive to the effective date of termination of the Squak Mountain Lease and the rent shall be prorated for any partial month that such rent is in effect. Rent shall be due on the first (1<sup>st</sup>) day of each calendar month, but Sublessee may elect to pay all twelve (12) months’ rent in one (1) payment due January 1 of each calendar year during the Term.

(c) As additional consideration for this Sublease, Sublessee shall fuel the back-up Generator at the Site consistent with Section 6(a) below during the Term of this Sublease.

(d) If, because of this Sublease, any additional rent or fees shall be payable by Sublessor to Owner, or extra services are ordered by Sublessor or activities are undertaken by Sublessor or otherwise on behalf of Sublessee with respect to Sublessee’s use of the Premises or on account of Sublessee’s default hereunder, then Sublessee shall pay to Sublessor such additional rent, fees, and costs on demand by Sublessor.

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(e) Rent and any other payments due to Sublessor under this Sublease shall (i) be delivered to Sublessor at the remittance address set forth below; (ii) be due and payable in advance, without notice or demand, and without offset or deduction; (iii) be made payable to [TBD]; and (iv) include Sublessor's Site Name and Sublease Number thereon.

Remittance Address: [TBD]

(f) Sublessee warrants that it is a tax-exempt government agency per RCW 82.29A, and is not required to pay Leasehold Excise Tax ("LET") at the time of executing this Sublease. Should Sublessee's central assessment status change, Sublessee agrees to immediately notify Sublessor and begin paying applicable LET to Sublessor or Washington State Department of Revenue ("DOR"), as determined by DOR. It is the responsibility of Sublessee to ascertain whether payment of LET is required to Sublessor or DOR. If Sublessee is centrally assessed by DOR, Sublessee must provide Sublessor documentation of Sublessee's central assessment status in advance of the Term Commencement Date and within thirty (30) days of a change in status. As of the date this Sublease is fully executed by both Parties, the LET rate is 12.84% of the then-current rent.

(g) If any sums payable to Sublessor under this Sublease are not received within ten (10) business days following the due date, Sublessee shall pay Sublessor, in addition to the amount due, a one-time late fee equal to five percent (5%) of the delinquent amount; provided that if the delinquent sum is the annual rent, then the one-time late fee shall equal five percent (5%) of one-twelfth (1/12) of the delinquent annual rent payment. In addition, all delinquent sums payable by Sublessee to Sublessor and not received by Sublessor within ten (10) business days of Sublessee's receipt of written notice that the sum is past due shall bear interest from the date due until paid in full at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is less. Also, there shall be a reasonable handling fee for any dishonored check in accordance with RCW 62A.3-515. Sublessor and Sublessee agree that such fees and interest represent a fair and reasonable estimate of the costs incurred by Sublessor by reason of delinquent payments and dishonored checks. Sublessor's acceptance of less than the full amount of any payment due from Sublessee shall not be deemed an accord and satisfaction, waiver, or compromise of such payment, unless specifically agreed to in writing by Sublessor.

#### 4. USE.

(a) The Premises shall only be used for the purpose of construction, installation, operation, maintenance, repair, replacement and removal of Sublessee's communication facilities, and associated equipment and improvements (collectively, the "**Communication Facilities**"), operating on federally licensed frequencies, all as specifically listed and described on the attached Exhibit C ("**Permitted Use**").

(b) Prior to performing any installation or construction work within the Site, Sublessee shall secure all necessary federal, state and local licenses, permits, and approvals for the Permitted Use (collectively, the "**Government Approvals**") at its sole cost and expense. Sublessor agrees to reasonably assist Sublessee with applications for the Government Approvals and with obtaining and maintaining the Government Approvals.

(c) All work conducted by Sublessee at the Site shall be completed in a good and workmanlike manner, in compliance with all applicable laws, regulations, ordinances, and Government Approvals, at Sublessee's sole cost and expense.

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**5. ACCESS.**

(a) As part of the consideration for this Sublease, Sublessor hereby grants Sublessee non-exclusive access on, over, under and across those areas of the Property depicted on **Exhibit B** that Sublessor has the right to use pursuant to the Prime Lease for ingress, egress, and utilities, between a public right of way and/or existing utility services located on or adjacent to the Site and the Premises, adequate to construct, install, operate, maintain, repair, replace and remove the Communication Facilities and utilities, including, but not limited to, the installation of power and telephone service cable, and to service the Communication Facilities at all times during the Term of this Sublease.

(b) Sublessee shall have the right to access the Premises, seven (7) days a week, twenty-four (24) hours a day, on foot, motor vehicle, including trucks, or by air over or along the access route specifically described and/or depicted in **Exhibit B**. Sublessee shall provide both Sublessor and Owner telephonic and email notice a minimum of twenty-four (24) hours in advance of accessing the Property for routing matters. If Sublessee, in its reasonable discretion, requires immediate access to its Communication Facilities on the Premises it may access them immediately, but shall provide both Sublessor and Owner telephonic and email notice of such access as soon as is reasonably practical thereafter. For purposes of this Section 5(b), Sublessor’s and Owner’s e-mail address and phone numbers for access notice are below. Sublessor may change its and Owner’s e-mail address and phone numbers at any time by providing Sublessee written notice thereof, in accordance with the terms of Section 12.

**Sublessor’s Contacts:**

E-Mail: \_\_\_\_\_  
Phone - Day: \_\_\_\_\_  
Phone - Night: \_\_\_\_\_

**Owner’s Contacts:**

E-Mail: N/A  
Normal business hours: (206) 772-7343  
Outside of normal business hours: (844) 204-4170

(c) Sublessor may access the Site at any time without prior notice to or approval of Sublessee; provided that Sublessor shall not access the Equipment Space or allow any third party to access the Equipment Space (except as provided in Sections 7 or 17(a) herein) without Sublessee’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Sublessor shall not allow the placement, construction or installation of any equipment or materials in the Equipment Space and/or Antenna Space by a third party without Sublessee’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

**6. UTILITIES.**

(a) Sublessor hereby grants Sublessee the right to reasonably use the existing electricity services, including use of the back-up power Generator, at the Site. The right to use Sublessor’s electricity services granted in this Section 6 are granted at no cost to Sublessee, in partial consideration for Sublessee providing the Squak Mountain Lease as set forth in Section 3(a) herein above; except that, as additional consideration for this Sublease, Sublessee shall be responsible, at its sole cost and expense, to ensure that the Generator is adequately fueled so as to provide at least twenty-four (24) hours of back-up power to all permitted users of the Site at all times during the Term. Sublessor agrees to give Sublessee at least twenty-four (24) hours advance telephonic notice at (206) 684-1111 of any planned interruptions of said electricity services. Sublessor shall not be responsible for interference with, interruption of or failure, beyond the reasonable control of Sublessor, of such electricity services to be furnished or supplied by Sublessor.

(b) Upon receipt of Sublessee’s written request, and to the extent consistent with Sublessor’s rights under the Prime Lease, Sublessor shall grant to any servicing utility company that is providing utility or similar services to Sublessee, including power and telecommunications, an easement between a public right of way and/or existing utility services located on or adjacent to the Site and the

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Communication Facilities, for the purpose of constructing, operating and maintaining such lines, wires, circuits, conduits, associated equipment cabinets and such appurtenances thereto, as such utility companies may from time to time require in order to provide such utility services to the Communication Facilities. Upon Sublessee's or the servicing utility company's request, Sublessor will execute a recordable instrument evidencing such grant of easement, at Sublessee's sole cost and expense.

#### **7. MAINTENANCE, REPAIR AND ABATEMENT OF PREMISES AND SITE.**

(a) Sublessee shall maintain the Antenna Space, Equipment Space, and Communication Facilities, including but not limited to its fuel storage tank and fuel lines, in good repair and tenantable condition during the Term. Except as expressly set forth in this Sublease, Sublessor shall not maintain, repair or otherwise touch or interfere with Sublessee's Communication Facilities without Sublessee's prior consent; provided that, in the event of an emergency posing an imminent threat of bodily injury or property damage, Sublessor may take action necessary to abate the threat and shall give Sublessee notice of such actions taken as soon as reasonably possible thereafter.

(b) Without limiting Sublessor's disclaimer of the Site condition in Section 1(d), Sublessor shall maintain the Site and its improvements thereon (excluding the Antenna Space and Equipment Space), in good repair and tenantable condition during the Term of this Sublease. Sublessor agrees to maintain the Tower at all times during the Term of this Sublease in such a manner so that the Tower meets the Class III Structural Classification defined in ANSI/TIA-222-G, or at the then-current standards for use by emergency, rescue or disaster operations.

#### **8. ASSIGNMENT/SUBLEASE.**

(a) Sublessee may not assign, sublease or transfer, in whole or in part, its interest in this Sublease without Sublessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. As a condition to Sublessor's approval, any potential assignee otherwise approved by Sublessor shall assume in writing all obligations of Sublessee under this Sublease and shall be jointly and severally liable with Sublessee for rental and other payments and performance of all terms, covenants and conditions of this Sublease, unless Sublessor relieves Sublessee of such obligations consistent with Section 8(c) of this Sublease. Any sublessee shall assume all obligations of Sublessee as to that portion of the Premises that is subleased and shall be jointly and severally liable with Sublessee for rental and other payments and performance of all terms, covenants and conditions of this Sublease with respect to such portion of the Premises.

(b) If Sublessor sells, leases, transfers or otherwise conveys all or any part of its interest in the Site to any transferee other than Sublessee, then such transfer shall be subject to this Sublease; provided that if the assignee is not also the tenant under the Squak Mountain Lease, then the Parties shall amend this Sublease to provide for Sublessee to pay reasonable rent as mutually negotiated by the Parties in accordance with Section 3(b) herein.

(c) No assignment, sublease or transfer shall relieve Sublessee of its liability for the full performance of all the terms, agreements, rent and conditions of this Sublease, unless such liability is relieved through Sublessor's written consent, which consent may be withheld, conditioned, or delayed in Sublessor's reasonable discretion.

(d) Sublessor's consent to any assignment, sublease or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment, sublease or transfer. Sublessee shall provide Sublessor with copies of all assignments, subleases and assumption instruments and such other documents that Sublessor may reasonably request.

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## 9. DISASTER.

(a) If the Premises are destroyed or damaged by fire, earthquake or other casualty so as to render the Premises unfit for use as provided for herein, then either Party may terminate this Sublease.

(b) If the Premises are destroyed and this Sublease is not terminated under Section 9(a) and if the Parties agree it is feasible to relocate the Communication Facilities to a mutually acceptable alternate location on the Site, then Sublessee may relocate all or any part of the Communication Facilities and/or Premises, at Sublessee's sole expense. If Sublessee elects to so relocate, then Sublessor will use reasonable efforts to provide an interim location for Sublessee to locate temporary, mobile communication facilities and equipment as necessary to continue service during repair or relocation of the Premises and/or Communication Facilities. A survey will be prepared for the relocated Premises, at Sublessee's expense, and the survey will replace **Exhibit B** attached hereto.

(c) Notwithstanding anything in this Sublease to the contrary, in the event of a fire, earthquake or other casualty, Sublessor shall have no obligation to repair, restore or rebuild any part of the Site or any of its improvements located thereon.

## 10. HAZARDOUS MATERIALS.

(a) Sublessor represents and warrants to Sublessee that Sublessor is not aware of (and has no duty to investigate) any Hazardous Materials (defined in Section 10(d) below) located on the Site in soil, groundwater or other environmental media in violation of applicable laws. Sublessee and Sublessor agree that they will not place, dispose of or store any Hazardous Materials on the Premises or the Site in violation of applicable laws.

(b) Sublessee shall indemnify, defend and hold harmless Sublessor with respect to any and all claims, demands, suits, causes of action, judgments, damages, costs, attorney fees, government orders, penalties or other requirements (hereafter "**Environmental Claim(s)**") arising from the presence or release of any Hazardous Materials on the Property caused by Sublessee, its employees or agents, except to the extent that an Environmental Claim is caused by Sublessor, its employees or agents, another tenant or other user or its employees or agents, or a third party.

(c) Sublessor shall indemnify, defend and hold harmless Sublessee with respect to any and all Environmental Claims arising from the presence or release of any Hazardous Materials on the Property caused by Sublessor, its employees or agents, except to the extent that an Environmental Claim is caused by Sublessee, its employees or agents.

(d) For purposes of this Sublease, "**Environmental Laws**" means all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, and "**Hazardous Materials**" means:

(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. 70A.300); or

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- (B) Washington Model Toxics Control Act (“MTCA”) as now existing or hereafter amended (RCW Ch. 70A.305); or
- (C) 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 (“CERCLA”) as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or
  - (B) Washington Model Toxics Control Act (“MTCA”) as now existing or hereafter amended (RCW Ch. 70A.305); or
- (iv) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

## 11. ALTERATIONS.

(a) In the event Sublessee desires to modify the Communication Facilities in a manner that requires additional space on the Site, Sublessee shall submit a written request to Sublessor, including any information that Sublessor may reasonably request, including but not limited to a written description of the modifications requested, site plans depicting the modifications to the Communication Facilities, the size and location of the proposed additional space and any additional access or utility rights being requested (collectively, “**Modifications**”). Provided Sublessor determines, in its reasonable discretion, that sufficient space is available and Sublessee’s Modifications will not diminish or hinder Sublessor’s current or future use of the Site, Sublessor may agree to grant Sublessee the right to make such Modifications, which approval shall be in the form of an amendment to this Sublease, upon mutually acceptable terms and conditions, which may include payment of rent and/or reimbursement of Sublessor’s administrative costs and expenses incurred to accommodate Sublessee’s requested Modifications.

(b) Subject to the Tower access restrictions set forth in Section 5(b), Sublessee may make alterations, additions and improvements in and to the Communication Facilities at any time during the Term of this Sublease, so long as they comply with all applicable laws, and so long as they do not interfere with the emergency radio communications operating from the Site and Sublessor’s and its other tenants’ then-current use of the Site, including but not limited to the Tower and Shelter. Notwithstanding the foregoing, Sublessee shall not, and shall not allow any of its subtenants to, make any alterations, additions or improvements to the Premises or the Communication Facilities that change the size or appearance thereof, that result in Modifications, that require any soil disturbance, trenching or core cutting on any part of the Site or that change the Permitted Use without Sublessor’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, but may be conditioned on the requesting entity first obtaining pollution liability insurance in compliance with Section 22 herein.

(c) All Modifications, alterations, additions and improvements to the Site, the Premises, and the Communication Facilities shall comply with the terms of the Prime Lease, and the Parties agree that noncompliance with the Prime Lease is a reasonable basis for Sublessor to deny consent to any such Modifications, alterations, additions and improvements. Where Owner’s consent is required under the Prime Lease for any Modifications, alterations, additions or improvements proposed by Sublessee, Sublessor shall make a reasonable good-faith effort to secure Owner’s consent thereto.

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**12. NOTICES AND MANAGEMENT.** Wherever in this Sublease written notices are to be given or made, they will be sent by certified mail, return receipt requested, or reliable overnight courier to the addresses listed below, unless different addresses shall be designated in writing and delivered to the other Party.

Sublessee: King County Facilities Management Division  
Real Estate Services  
Attn: Leasing Supervisor  
RE: Skyway KC METRO Sublease / PSERN-10b  
**[TBD]**  
Seattle, WA 98104

With a copy to: King County METRO Department of Transit  
Attn: **Real Estate**  
RE: Skyway KC METRO Sublease / PSERN-10b  
201 S. Jackson Street, KSC-TR-0431  
Seattle, WA 98104

**Sublessor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each Party shall appoint a manager to have responsibility for activities carried out under this Sublease and to resolve any disputes that may arise between the Parties under Section 21. Each Party shall notify the other in writing of its appointed manager and their contact information concurrently with full execution of this Sublease, and shall give the other written notice immediately of any change in the appointed manager and their contact information during the Term.

**13. WASTE AND NUISANCE PROHIBITED.** During the Term of this Sublease, Sublessee shall endeavor in good faith to comply with all applicable laws affecting the Premises. Sublessee shall not commit or suffer to be committed any waste on the Premises or any nuisance.

**14. NO LIENS.** Sublessee shall not cause or allow the Property or the Site, or Sublessor’s interest therein, to be subjected to any mechanic's lien or any other lien whatsoever. If any mechanic's lien or other lien, charge or order for payment of money is filed as a result of the acts or omissions of Sublessee in connection with this Sublease, Sublessee will cause such lien, charge or order to be discharged or appropriately bonded or otherwise reasonably secured (“**Secured**”) within thirty (30) days after notice thereof. If Sublessee fails to cause the lien or encumbrance to be Secured within the thirty (30) day period, then Sublessor will be entitled to do so at Sublessee’s expense.

**15. SIGNS.** Sublessee shall obtain Sublessor’s prior written approval before erecting or installing any signs or symbols except such signs or symbols as may be required by applicable laws. Any signs or symbols placed on the Premises by Sublessee shall be removed by Sublessee at the expiration or earlier termination of this Sublease, or the Approved Holdover under Section 28(k), if applicable, and Sublessee shall repair any related damage or injury to the Premises caused by such removal. If not so removed by Sublessee, Sublessor may have the same removed and repairs performed at Sublessee’s expense.



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King County Sublease Name: Skyway KC METRO Sublease  
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## 16. CONDEMNATION.

(a) If the Premises, or any part thereof the loss of which impairs the utility of the Premises to a significant extent, are appropriated or taken for any public use by virtue of eminent domain or condemnation proceeding, or by conveyance in lieu thereof, or if by reason of law or by court decree, whether by consent or otherwise, or if the use of the Premises by Sublessee for any of the specific purposes herein before referred to shall be prohibited, then either Party shall have the right to terminate this Sublease upon written notice to the other.

(b) In the event of a partial taking, if neither Party elects to terminate this Sublease, Sublessee's possession of that part of the Premises not so taken shall continue under the same terms and conditions hereof. Alternatively, in the event of a partial taking, if the Parties agree it is feasible to relocate the Communication Facilities to a mutually acceptable alternate location on the Site, then Sublessee shall have the right to relocate all or any part of the Communication Facilities and/or Premises, at Sublessee's sole expense. A survey will be prepared for the relocated Premises at Sublessee's expense, and the survey will replace **Exhibit B** attached hereto.

(c) Notwithstanding any other provision of this Sublease, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to and be the property of Sublessor, whether such compensation be awarded or paid as compensation for diminution in value of the leasehold or to the fee. Provided, however, Sublessor shall not be entitled to any award made to Sublessee for depreciation to and cost of removal or relocation of the Communication Facilities, provided that no award for such claims shall reduce the amount of any award made to Sublessor.

## 17. DEFAULT.

(a) If Sublessee should fail to cure any default: (i) in the payment of any sum due under this Sublease within fifteen (15) days after receipt of written notice; or (ii) in the keeping of any other term, covenant or condition herein with all reasonable dispatch, but not more than thirty (30) days after receipt of written notice (unless more than thirty (30) days is reasonably needed to effectuate the cure, in which case Sublessee must commence to cure such default in good faith during the initial thirty (30) day period), then Sublessor shall have the right, at its option, in addition to, and not exclusive of, any other remedy Sublessor may have by operation of law, either (i) to remedy Sublessee's failure to perform; or (ii) to terminate this Sublease upon written notice to Sublessee. Sublessee shall be responsible for any direct costs incurred by Sublessor in remedying Sublessee's default.

(b) If Sublessor should fail to remedy any default in the keeping of any term, covenant or condition herein with all reasonable dispatch, but not more than thirty (30) days after receipt of written notice from Sublessee (unless more than thirty (30) days is reasonably needed to effectuate the cure, in which case Sublessor must commence to cure such default in good faith during the initial thirty (30) day period), then Sublessee shall have the right, at its option, in addition to and not exclusive of any other remedy Sublessee may have by operation of law, either (i) to remedy Sublessor's failure to perform, in which case Sublessor shall be responsible for any direct costs incurred by Sublessee in remedying Sublessor's default; or (ii) to terminate this Sublease upon written notice to Sublessor; provided that such termination shall not relieve Sublessee of any outstanding debt or obligation then due and owing under this Sublease; and provided further that Sublessee shall only be responsible for rent (if any) to and including the termination date.

**18. TERMINATION.** In addition to the termination rights set forth elsewhere in this Sublease, the Parties may terminate this Sublease as follows:

(a) Sublessee may terminate this Sublease for any reason whatsoever upon nine (9) months written notice to Sublessor. Sublessee also retains the right to terminate this Sublease upon ninety (90) days written notice to Sublessor if: (i) Sublessee determines that it cannot obtain the Government

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Approvals required to employ the Premises for the use described in this Sublease, or if any necessary approval is revoked or terminated; or (ii) if Sublessee reasonably determines that, for technical, design, interference, environmental, economic or title reasons, the Premises are not necessary or suitable for the operation of the use described in this Sublease.

(b) Sublessor may terminate this Sublease without penalty or further liability: (i) upon thirty (30) days written notice if the Premises has been abandoned, in Sublessor's sole judgment, for a continuous period of ninety (90) calendar days; (ii) immediately upon written notice, if Sublessor is required by court order, by legislative action or by a governmental agency having jurisdiction, to take some action that would effectively prohibit Sublessee's use of the Premises; (iii) immediately upon written notice, if Sublessee causes interference (as defined in Section 26(d) below) to Sublessor's use of the Site, and fails to cure it as provided in Section 26; (iv) upon three (3) years written notice for any reason whatsoever; or (v) immediately upon Sublessee's insolvency if Sublessee is the subject of an involuntary bankruptcy proceeding or commences a voluntary or involuntary bankruptcy proceeding or makes an assignment for the benefit of creditors or if a receiver or other liquidating officer is appointed for Sublessee.

**19. LITIGATION COSTS/VENUE AND JURISDICTION.** If any legal action is instituted to enforce or construe this Sublease, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney fees and expenses. Venue and jurisdiction for any legal action brought hereunder shall be King County Superior Court, and no other venue; and the Parties hereby agree to the personal jurisdiction of such court.

**20. REMOVAL OF PERSONAL PROPERTY BY SUBLESSEE.**

(a) All portions of the Communication Facilities brought onto the Site by Sublessee will be and remain Sublessee's personal property during the Term of this Sublease. Sublessor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facilities or any portion thereof. During the Term of this Sublease, Sublessee shall have the right to remove some or all of its Communication Facilities, whether or not attached to the Premises, provided that such may be removed without serious damage to the Site. All damage caused by removal of Sublessee's Communication Facilities shall be promptly restored or repaired by Sublessee at Sublessee's sole cost and expense.

(b) Upon the expiration or earlier termination of this Sublease, or the Approved Holdover under Section 28(k), if applicable, Sublessee shall remove all of the Communication Facilities from the Property, provided that such may be removed without serious damage to the Site. All damage caused by removal of Sublessee's Communication Facilities shall be promptly restored or repaired by Sublessee at Sublessee's sole cost and expense. All of the Communication Facilities not so removed within thirty (30) days after the expiration or earlier termination of this Sublease, or the Approved Holdover under Section 28(k), if applicable, shall, at Sublessor's sole discretion, either be: (i) removed and stored by Sublessor at Sublessee's sole cost and expense, without Sublessor incurring any liability therefor; or (ii) deemed abandoned by Sublessor and become Sublessor's personal property, without the need for any additional documentation.

(c) Without limiting Sublessee's duties under Section 20(b), upon the expiration or earlier termination of this Sublease, or the Approved Holdover under Section 28(k), if applicable, Sublessee shall restore the Premises to the condition that existed prior to Sublessee's occupancy, reasonable wear and tear excepted, including removal of Sublessee's Communication Facilities and any other personal property and equipment, subject to the terms of Section 20(d) below. This work shall be done at Sublessee's sole expense and to the reasonable satisfaction of Sublessor.

(d) Upon the expiration or earlier termination of this Sublease, or the Approved Holdover under Section 28(k), if applicable, and upon receipt of Sublessor's prior written approval, which shall not be

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unreasonably withheld, delayed or conditioned, Sublessee at its option may leave on the Site any improvements owned or installed by or at Sublessee's direction. Sublessor shall assume ownership of all facilities and improvements remaining on the Site pursuant to this Section 20(d) without the need for any additional documentation, payment or other compensation to Sublessee, and such facilities and improvements will become Sublessor's personal property.

## **21. DISPUTE RESOLUTION.**

(a) In the event of a dispute between Sublessor and Sublessee arising out of or relating to this Sublease, the dispute shall first be referred to managers designated by Sublessor and Sublessee to have oversight over the administration of this Sublease. The managers shall meet within a reasonable time not later than ten (10) calendar days after either Party's request for a meeting, whichever request is first, and the Parties shall make a good-faith effort to resolve the dispute.

(b) If the Parties are unable to resolve the dispute under the procedure set forth in Section 21(a), the Parties may agree to refer the matter to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the Parties.

(c) If the Parties fail to achieve a resolution of the dispute through meeting or mediation within a reasonable period of time, or within the cure periods provided for in Section 17 if pursuant to a default, then either Party may seek any and all remedies available at law against the other Party for such dispute, default, or both.

## **22. INSURANCE.**

(a) At all times during the Term of this Sublease, Sublessee shall procure and maintain commercial general liability ("CGL") insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent. Prior to Sublessee's use and maintenance of a fuel storage tank on the Site, and to the extent reasonably commercially available, Sublessee shall procure and maintain pollution liability coverage in the amount of One Million Dollars (\$1,000,000) per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed. The aforementioned CGL and pollution liability insurance policies shall be endorsed to include both Sublessor and Owner as additional insured, for full coverage and policy limits, with respect to claims arising out of or related to this Sublease. In lieu of the aforementioned insurance, Sublessee may maintain, at its own expense and in accordance with applicable law, a fully funded self-insurance program for all of its liability exposures for this Sublease, including but not limited to injuries to persons and damage to property. Sublessee agrees to provide Sublessor with at least thirty (30) days prior written notice of any material change in Sublessee's insurance or insurance program. Sublessee shall provide Sublessor with a certificate of insurance and additional insured endorsements, or, if self-insured, a letter of self-insurance as adequate proof of coverage on or prior to the Term Commencement Date and at any time during the Term of this Sublease upon receipt of Sublessor's written request.

(b) Both Parties shall carry "All Risk" property insurance in an amount equal to the full replacement value of its improvements and personal property on the Property or shall self-insure their improvements and personal property on the Property.

(c) Notwithstanding any language to the contrary contained in this Sublease, Sublessor and Sublessee 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

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insurance or required to be covered under this Sublease and each hereby releases the other from any such claim or liability regardless of the cause of such loss.

**23. TAXES.** Sublessor shall pay all real property taxes, assessments, or levies assessed against the Site and Sublessor's improvements thereon, excluding the Communication Facilities owned by Sublessee. Without limiting Sublessee's obligations under Section 3(f) of this Sublease regarding Leasehold Excise Tax, Sublessee shall pay all taxes, assessments or levies that shall be assessed on, or with respect to, the Communication Facilities and Sublessee's improvements to the Premises.

**24. WARRANTIES.**

(a) Sublessor and Sublessee each represent, warrant and agree that: (i) it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Sublease and bind itself hereto; and (ii) the officers and individuals executing below have been duly authorized to act for and on behalf of the Party for purposes of executing this Sublease.

(b) Sublessor represents, warrants and agrees that: (i) Sublessor has primary control of the ground on which the Site is located by lease, license or other written agreement, and owns certain communication facilities and improvements located thereon including but not limited to the Tower, Shelter and Generator, and Sublessor is granting this Sublease to Sublessee in good faith and with the intent to comply with the Prime Lease; (ii) Sublessor has not encumbered and will not encumber the Premises with any liens, restrictions, mortgages, covenants, conditions, easements, leases or any other agreements of record or not of record, which would adversely affect Sublessee's rights granted in this Sublease; (iii) as long as Sublessee is not in breach or default beyond any applicable cure period, Sublessor will not interfere with Sublessee's sole, actual, quiet and peaceful use, enjoyment and possession of the Equipment Space; and (iv) to Sublessor's actual present knowledge, without a duty to investigate, Sublessor's execution and performance of this Sublease will not violate any laws, covenants or the provisions of any mortgage, lease or other agreement binding on Sublessor.

(c) Sublessee acknowledges that Sublessor's primary use of the Site is for operation of emergency radio communications, among other things. Notwithstanding anything to the contrary contained in this Sublease, Sublessee hereby represents and warrants to Sublessor that Sublessee's use of the Premises will at no time interfere with Sublessor's primary use of the Site.

(d) Sublessee hereby represents, warrants and guarantees that Sublessee has secured and shall maintain during the Term of this Sublease all necessary Government Approvals for the Permitted Use.

**25. INDEMNITY AND HOLD HARMLESS.**

(a) Sublessee agrees to indemnify and hold Sublessor harmless as provided herein to the maximum extent possible under law. Accordingly, Sublessee agrees for itself, its successors and assigns, to defend, indemnify and hold harmless Sublessor, its appointed and elected officials, and employees and agents, from and against liability for all claims, demands, suits, losses, judgments, damages, and costs, including costs of defense thereof for injury to persons, death, or property damage (collectively, "**Claims**"), that are caused by, arise out of, or are incidental to Sublessee's acts or omissions in the exercise of rights and privileges granted by this Sublease, except to the extent of the negligence or willful misconduct of Sublessor, and its employees, agents and contractors.

(b) Sublessor agrees to indemnify and hold Sublessee harmless as provided herein to the maximum extent possible under law. Accordingly, Sublessor agrees for itself, its successors and assigns, to defend, indemnify and hold harmless Sublessee, its appointed and elected officials, and employees, and agents, from and against liability for all Claims that are caused by, arise out of, or are incidental to

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Sublessor's negligent acts or omissions, or willful misconduct with regard to the Site, except to the extent of the negligence or willful misconduct of Sublessee, and its employees, agents and contractors.

(c) Where such Claims result from the concurrent negligence of the Parties, the provisions provided in this Section 25 shall be valid and enforceable only to the extent of each Party's negligence.

(d) Each of the Parties agrees that its obligations under this Section 25 extend to any Claim brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such Claims under the industrial insurance provisions of Title 51 RCW.

(e) If it is determined that RCW 4.24.115 applies to this Sublease, then Sublessee agrees to defend, hold harmless, and indemnify Sublessor to the maximum extent thereunder.

(f) The provisions of this Section 25 do not apply to matters regarding Hazardous Materials that are subject to Section 10.

## **26. INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Site, Sublessor will endeavor to provide Sublessee with a list of all such existing radio frequency user(s) and the frequencies used by each to allow Sublessee to evaluate and avoid the potential for interference. Sublessee warrants that its use of the Premises will not interfere with existing radio frequency user(s) at the time Sublessee begins its use of the Premises, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws, licenses and manufacturers' specifications.

(b) Sublessor will not grant a lease, license or any other right to any third party for the use of the Site if Sublessor has actual knowledge that such use will adversely affect or interfere with Sublessee's Communication Facilities, Permitted Use or rights under this Sublease. Sublessor shall endeavor to include in all future leases, subleases, licenses and agreements for use of the Site terms substantially similar to the non-interference terms set out in this Section 26.

(c) Sublessee shall, and Sublessor agrees to require all subsequent users of radio frequencies on the Site, including any subsequent new use of radio frequencies on the Site by Sublessor, to: (i) comply with the PSErn Operator Radio Communications Services Site and Facility Standards set forth on **Exhibit D**; (ii) comply with the rules, regulations, and licenses of the Federal Communications Commission ("FCC"); (iii) cease operating any equipment that causes interference with pre-existing uses twenty-four (24) hours after receipt of notice of interference, except for intermittent testing to determine the cause of such interference, until the interference has been corrected; (iv) perform radio frequency intermodulation studies prior to the installation of additional equipment and any change in radio frequencies to confirm that the proposed installation and/or change will not create interference with existing uses; and (v) reasonably cooperate with other users in order to troubleshoot the cause of any radio frequency interference that may arise. Notwithstanding the preceding sentence, the last user to add equipment on or change radio frequencies at the Site that causes radio frequency interference shall have primary responsibility to investigate the cause of the interference and to incur the expense to cure the interference. If the interference cannot be cured using commercially reasonable efforts, such user shall remove from the Site the equipment that causes the interference.

(d) For the purposes of this Sublease, "**interference**" includes: (i) harmful interference as defined by the FCC; and (ii) any use on the Site that causes physical obstruction with the use of the Site

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by either Party, or by any third party that has a legal right to use all or any part of the Site, or by any of them.

**27. NON-DISCRIMINATION.** Sublessee and Sublessor, 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 and local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Sublessee and Sublessor shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, sex, status as a family caregiver, military status or status as a veteran who was honorably discharged or who was discharged solely as a result of the person's sexual orientation or 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 Chapter 12.16, as now codified and as hereafter amended. Sublessee and Sublessor 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, King County Charter Section 840, 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 Sublease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Sublease and may result in ineligibility for further agreements between the Parties.

**28. MISCELLANEOUS.**

(a) NON-WAIVER: No waiver by either Party of any of the terms of this Sublease shall be construed as a waiver of the same term or other rights of that Party in the future.

(b) ENTIRE AGREEMENT: This Sublease contains all of the terms and conditions agreed upon by the Parties regarding the subject matter of this Sublease. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Sublease. No modification or amendment to this Sublease shall be valid until put in writing and signed by both Parties with the same formalities as this Sublease. The Parties shall cooperate, take further action, and execute and deliver further documents as may be reasonably required in order to carry out the purposes of this Sublease and the Communication Facilities.

(c) HEADINGS: The section headings appearing in this Sublease have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.

(d) COUNTERPARTS: This Sublease may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

(e) SEVERABILITY; INVALIDITY OF PROVISIONS: If any parts, terms or provisions of this Sublease are held by the courts to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of this Sublease, the remainder of this Sublease being valid and enforced to the fullest extent permitted by law. If it should appear that any part, term or provision of this Sublease is in conflict with any applicable laws, then the part, term or provision shall be deemed inoperative and null and void insofar as it is in conflict therewith, and this Sublease shall be deemed modified to conform to such statutory provision.

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(f) USE OF TERMS: Whenever the singular number is used in this Sublease and whenever required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word “person” shall include corporation, partnership, limited liability company, firm, association or other entity.

(g) SUCCESSORS AND ASSIGNS: Subject to the Prime Lease, this Sublease shall run with the land for the duration of the Term (subject to termination as provided in Section 18 and elsewhere in this Sublease), and shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives and assigns.

(h) INTERPRETATION: Unless otherwise specified, the following rules of construction and interpretation apply: (i) use of the term “including” will be interpreted to mean “including but not limited to”; (ii) use of the terms “termination” or “expiration” are interchangeable except where used in distinction to each other; (iii) reference to a default will take into consideration any applicable notice, grace and cure periods; and (iv) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Sublease, the ambiguity shall not be resolved on the basis of who drafted this Sublease.

(i) GOVERNED BY LAWS OF STATE OF WASHINGTON: This Sublease shall be governed by the law of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions.

(j) FAILURE TO INSIST UPON STRICT PERFORMANCE: The failure of either Party to insist upon strict performance of any of the terms or conditions of this Sublease shall not constitute a waiver thereof.

(k) HOLDOVER:

(i) If Sublessee remains in possession of the Premises after expiration or earlier termination of this Sublease (“**Termination Date**”), upon obtaining Sublessor’s prior written consent thereto, such possession by Sublessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days’ written notice given at any time by either Party (“**Approved Holdover**”). In such event, all provisions of this Sublease shall apply to the month-to-month tenancy, except as otherwise provided in this Section 28(k).

(ii) During the Approved Holdover, if the Parties are actively, in good faith, negotiating a new agreement for Sublessee’s continued use of the Premises and such new agreement is fully executed by the Parties within twelve (12) months of the Termination Date, then Sublessee shall continue to pay Sublessor the rent in effect as of the Termination Date, if any, prorated and payable on a monthly basis until the new agreement is fully executed. If the new agreement is not fully executed within such twelve (12) month period, then commencing on the twelve (12) month anniversary of the Termination Date and continuing until Sublessee surrenders possession of the Premises to Sublessor in accordance with the terms of Section 20, Sublessee shall pay Sublessor one hundred two percent (102%) of the rent in effect as of the Termination Date, if any, prorated and payable on a monthly basis (“**Holdover Rent**”).

(iii) If the Parties are not actively, in good faith, negotiating a new agreement for Sublessee’s continued use of the Premises during the Approved Holdover, or if Sublessee fails to surrender the Premises upon the Termination Date, without obtaining Sublessor’s prior written consent to hold over, Sublessee shall pay Sublessor the Holdover Rent from the Termination Date

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until Sublessee surrenders possession of the Premises to Sublessor in accordance with the terms of Section 20.

(iv) At all times during any holdover, Sublessee shall indemnify and hold Sublessor harmless from all loss and liability, including, but not limited to, any claims made by Owner and any succeeding tenant founded on or resulting from such failure to surrender, together with interest, reasonable attorney's fees, costs, and expenses.

(v) Except as otherwise provided above, acceptance by Sublessor of any monies after the Termination Date shall not result in a renewal or extension of this Sublease, nor affect Sublessor's right of re-entry or any rights of Sublessor herein or available at law.

(l) SURVIVAL: Any provisions of this Sublease relating to indemnification shall survive the termination or expiration of this Sublease, and shall also extend to all Claims and Environmental Claims arising prior to the Term Commencement Date of this Sublease if Sublessee's use of any part of the Premises commenced prior thereto. In addition, any terms and conditions contained in this Sublease that by their sense and context are intended to survive the termination or expiration of this Sublease shall so survive.

(m) EXHIBITS: This Sublease is subject to the terms and conditions of the following exhibits, which exhibits are an integral part of this Sublease and are incorporated herein by this reference:  
Exhibit A – Description of Property and Site  
Exhibit B – Depiction of Premises  
Exhibit C – Technical Data Sheet  
Exhibit D – PSERN Operator Radio Communications Services Site and Facility Standards  
Exhibit E – Prime Lease

[SIGNATURES ON FOLLOWING PAGES]







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**EXHIBIT A**  
**Description of Property and Site**  
**(Page 1 of 2)**

**Legal Description of the Property:**

LOTS 1 AND 2, BLOCK 21, SKYWAY PARK ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 40 OF PLATS, PAGES 6 THOURGH 9, INCLUSIVE, RECORDS OF KING COUNTY, SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

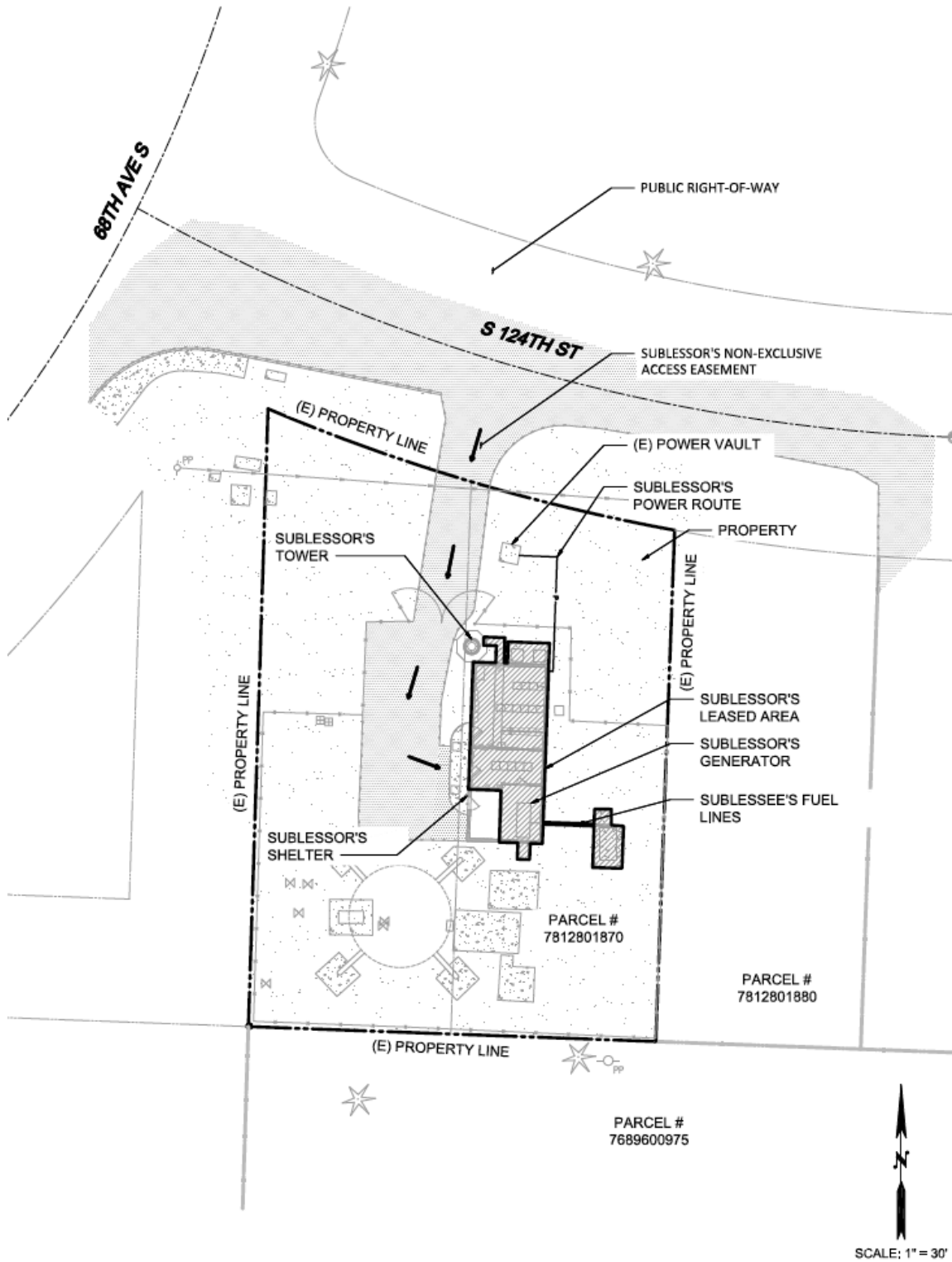
APN: 781280-1870

Address: 6805 S. 124<sup>th</sup> St., Seattle, WA 98178

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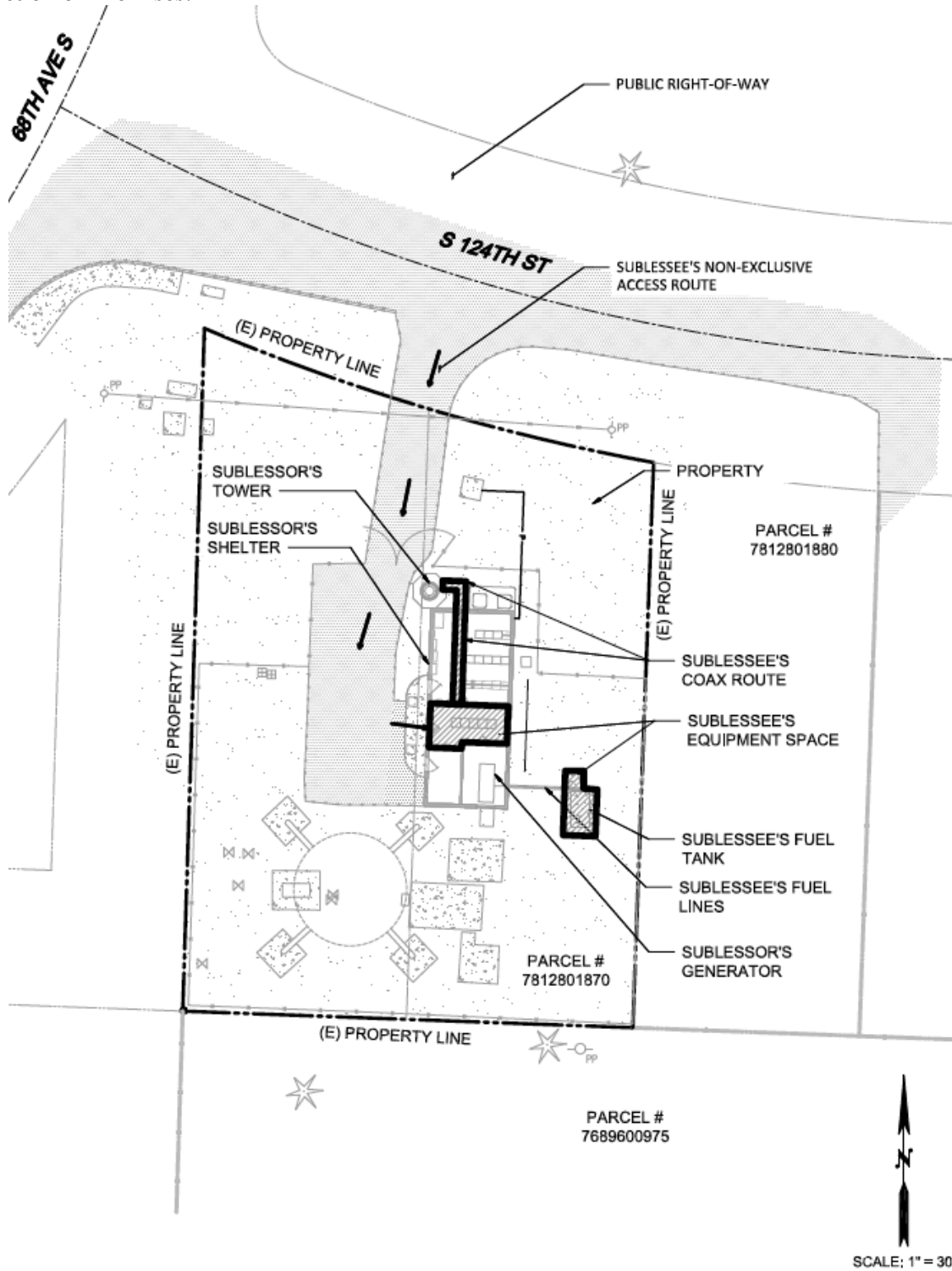
**EXHIBIT A**  
**(Page 2 of 2)**

**Description and/or depiction of Sublessor's Site:**

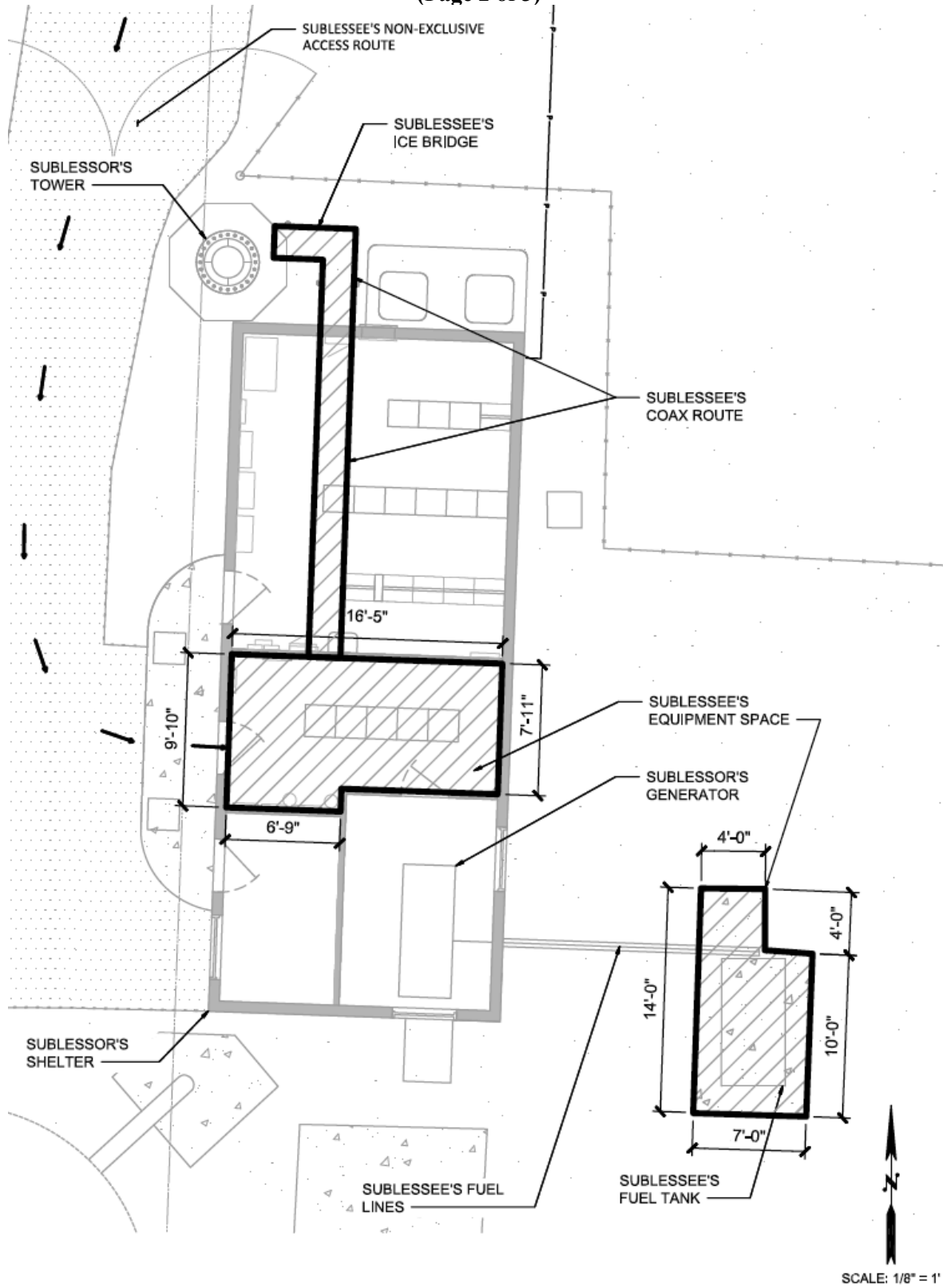


**EXHIBIT B**  
**Depiction of Premises**  
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Depiction of Premises:

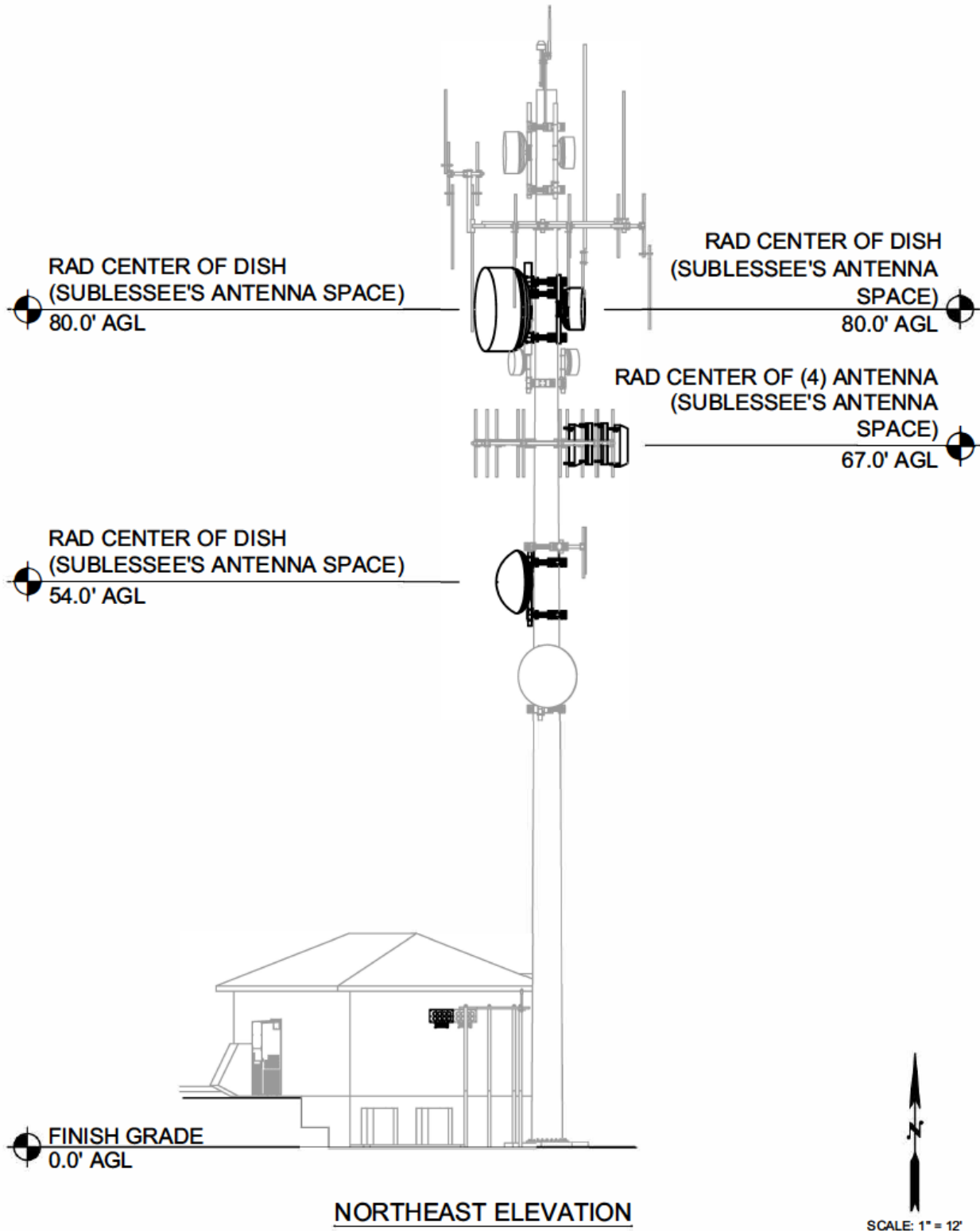


**EXHIBIT B**  
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**EXHIBIT B**  
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**EXHIBIT C**  
**Technical Data Sheet**

**1. Sublessee Information:**

Sublessee Name: King County

Notice Address: 201 S Jackson St, KSC-TR-0431, Seattle, WA 98104

Contact Name/Phone: Transit Control Center, 206-684-1111

**2. Site Information:**

Sublessee Site Number:

Sublessee Site Name: Skyway

Property Address: 6805 South 124<sup>th</sup> Street, Seattle, WA 98178

Property APN: 781280-1870

**3. Proposed Communication Facilities:**

FCC/NTIA Call Sign:

Date FCC/NTIA License(s)

Copy of FCC License(s) provided to

WQHJ935

Eff: 02/06/2019 Exp: 12/11/2027

Sublessor

WQGX270

Eff: 06/28/2017 Exp: 05/11/2027

**Tower Equipment:**

Number of Antennas	Mfr./Model & Type No.	Weight (lbs.)	Dimensions (inches)	Location on Tower (Note if attachment or RAD Center)	Direction of Radiation (Azimuth)
2	Antel LPA-80063/4CF (Panel Antennas)	12 lbs.	47.8" x 11.2" x 5.9"	67 feet RAD center	260
2	Andrew DB844H90E-A Dipole Antennas	14 lbs.	48" x 6" x 8.5"	67 feet RAD center	260
1	Andrew PAR 6-107 Microwave Dish	154 lbs.	82.7" x 81.5" x 34.6"	E Facing. 54 feet	94.32
1	Andrew HP8-107F Microwave Dish	500 lbs.	100" x 100"	E Facing. 80 feet	94.32
1	Andrew VHLP4-11 Microwave Dish	70.5 lbs.	50.8" x 50.8" x 30.2"	NW Facing. 80 feet	298.76

Number of Transmission Lines:	Manufacturer & Type No.	Diameter (inches)	Length (feet)
4	Andrew heliax 7/8 ava5-50	7/8"	97 feet
2	Andrew elliptical 90 series	1.32" x .80"	110 feet
1	Andrew elliptical 90 series	1.32" x .80"	84 feet

Additional Equipment to be placed on Tower: None

**Radios:**



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# of Radio Units per TX/RX Freq.	Transmit Freq. (MHz)	Receive Freq. (MHz)	Channels, Nos. & Type (analog, digital, etc.)	Max. Power Output (Watts)
1	774.64375	804.64375	CH 1 P25	100
1	774.63125	804.63125	CH 2 P25	100
1	774.39375	804.39375	CH 3 P25	100
1	774.38125	804.38125	CH 4 P25	100
1	774.14375	804.14375	CH 5 P25	100
1	774.13125	804.13125	CH 6 P25	100
1	770.51875	800.51875	CH 7 P25	100
1	770.26875	800.26875	CH 8 P25	100
1	770.01875	800.01875	CH 9 P25	100
1	769.76875	799.76875	CH 10 P25	100
1	769.51875	799.51875	CH 11 P25	100
1	770.50625	800.50625	CH 12 P25	100
1	10755.0	11245.0	MPLS Microwave Backhaul	468
1	11485.0	10995.0	MPLS Microwave Backhaul	1862

**Location of Equipment:** Sublessor's Shelter  Ground  Other

**Dimensions:** Approximately 144 sq. ft. of space in Sublessor's Shelter and approximately 86 sq. ft of ground space for Sublessee's 1,000-gallon fuel storage tank.

**4. Proposed Services:**

Backup Power Generator provided by: Sublessor  Sublessee  N/A   
 If provided by Sublessor, required kilowatts: 26.342 kW

Power provided by: Sublessor  Sublessee  N/A   
 Electricity/Power requirements: AC  UPS  DC

Draw in Amps: 114.6 Draw in Amps: \_\_\_\_\_ Draw in Amps: \_\_\_\_\_

Backhaul provided by: Sublessor  Sublessee  N/A

Telephone needed Yes  No  **NOTE: SUBLESSOR WILL NOT PROVIDE**

**5. Additional Information:**

- Sublessee is responsible, at its sole cost and expense, for providing all fuel for Sublessor's Generator during the Term of this Sublease.

**EXHIBIT D**  
**PSERN Operator Radio Communications Services**  
**Site and Facility Standards**

All fixed transmitting and receiving equipment installed within PSERN Operator facilities shall employ isolators or similar devices and band pass filtering or alternative band pass filtering (such as using window filters for broadband services like PCS) which accomplishes the same objectives. These devices are intended to minimize spurious radiation, receiver local oscillator leakage and transmitter and receiver intermodulation products. The following standards constitute the *minimum requirements* for use of wireless transmitting and receiving equipment.

***Transmitter/Receiver Filtering Standards***

The following transmitter/receiver filtering standards shall be observed in all PSERN Operator facilities:

1. Transmitters in the 25 to 54 MHz range shall have a band pass filter providing a minimum of 30 dB of attenuation 1.0 MHz removed from the operating frequency. Transmitters in this frequency range should be fitted with a single isolator providing a minimum of 20 dB isolation.
2. Transmitters in the 72 to 76 MHz range shall have a band pass filter providing a minimum of 30 dB of attenuation 1.0 MHz removed from the operating frequency. Transmitters in this frequency range shall also be fitted with dual isolators providing a minimum of 50 dB isolation.
3. Transmitters in the 88 to 108 MHz range shall have a band pass filter providing a minimum of 30 dB of attenuation 1.0 MHz removed from the operating frequency. Transmitters in this frequency range shall also be fitted with dual isolators providing a minimum of 50 dB isolation. No transmitters with a transmitter power output of over 100 watts shall be permitted within PSERN Operator facilities. In addition, some facilities may not allow use of transmitting equipment in this frequency range.
4. Transmitters in the 108 to 225 MHz range shall have a band pass filter providing a minimum of 15 dB of attenuation 1.0 MHz removed from the operating frequency. Transmitters in this frequency range shall also be fitted with dual isolators providing a minimum of 50 dB isolation.
5. Transmitters in the 225 to 400 MHz range shall have a band pass filter providing a minimum of 20 dB of attenuation 1.0 MHz removed from the operating frequency. Transmitters in this frequency range shall also be fitted with dual isolators providing a minimum of 50 dB isolation.
6. Transmitters in the 400 to 512 MHz range shall have a band pass filter providing a minimum of 20 dB of attenuation 2.0 MHz removed from the operating frequency. Transmitters in this frequency range shall also be fitted with dual isolators providing a minimum of 50 dB isolation. Window filtering with broader responses may be authorized on a case by case basis.
7. Transmitters in the 512 to 746 MHz range shall have a band pass filter providing a minimum of 20 dB of attenuation 2.0 MHz removed from the operating frequency. Transmitters in this frequency range shall also be fitted with dual isolators providing a minimum of 50 dB isolation.
8. No broadcast transmitters in the 746 to 806 MHz range shall be permitted in PSERN Operator facilities.
9. Transmitters in the 806 to 990 MHz range shall have a band pass filter providing a minimum of 15 dB of attenuation 3.0 MHz removed from the operating frequency. Transmitters in this frequency range

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shall also be fitted with dual isolators providing a minimum of 50 dB isolation. Window filtering with broader responses may be authorized on a case by case basis.

***Site Engineering Standards and Site User Practices***

The following site engineering standards and site user practices shall be observed in all PSERN Operator facilities:

1. A band pass cavity shall always be used before each receiver. A window filter may be substituted in multicoupled systems. Crystal filters are also advisable at crowded facilities.
2. A band reject duplexer may not be used unless accompanied by the required band pass cavities. A pass reject duplexer may be used, provided the duplexer band pass characteristics meet the minimum requirements for transmitter band pass filtering.
3. All cables used in PSERN Operator facilities must, at minimum, be double-shielded with 100% braid coverage. Use of solid outer shield cables (i.e. 'Heliac') is strongly encouraged. All external feed lines shall be solid-shielded.
4. All cables used shall be covered with an insulating jacket. Cables used externally shall be covered with an ultra-violet resistant insulating jacket. No cables with aluminum outer conductors shall be used in PSERN Operator facilities.
5. Use of constant impedance connectors shall be required. Type 'N,' BNC or 7/16 DIN connector types are typical constant impedance connectors. Adapters shall not be used for permanent connections.
6. All equipment shall be properly grounded. Grounding shall be performed by grounding the radio equipment manufacturers designated equipment ground and shall be tied to the radio facility equipment ground, preferably using flat copper strap or copper braid. The AC line ground shall also be used to provide the protective ground. Use of three-wire to two-wire adapters shall be prohibited. The Manager of the PSERN Operator Radio Communications Services shall identify the radio facility ground point.
7. All transmission lines shall be fastened to towers, cable trays and other site attachment points using manufactured hardware designed for the purpose. All transmission lines shall be grounded before entry into the radio facility and shall pass through PSERN Operator approved lightning protection equipment. Use of cable ties, ty-wraps and similar attachment hardware is generally discouraged but may be permitted on a case by case basis. Use of non-insulated metallic ties shall be strictly prohibited. Non-insulated transmission lines shall not be used in PSERN Operator facilities. Non-insulated rigid wave guide is acceptable when properly attached using rigid attachment hardware.
8. All telephone circuits terminating in PSERN Operator radio facilities shall have lightning protection at the entry point into the facility.
9. All loose metallic objects shall be removed from the facility at the conclusion of any work performed on-site. Metallic trash shall be removed from the facility entirely.
10. All equipment shall be maintained in such a fashion as to be in compliance with all FCC, NTIA, FAA and state and local laws and regulations. Commercial and public safety radio equipment shall be FCC type-accepted. Federal government and amateur radio equipment shall be constructed in such a

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fashion as to be of commercial quality. Quarterly checks of the receiving equipment, transmitting equipment, antennas and customer-owned site filtering equipment are strongly encouraged.

11. Interference problems resulting from the addition of a new user to a PSERN Operator facility shall be the responsibility of the 'last-in' tenant to resolve, provided that interference problems are not the result of a non-compliant installation by an existing tenant. Significant interference may require that a licensee cease operation until the interference problem can be resolved. Should the problem not be resolvable to the satisfaction of the Manager of the PSERN Operator Radio Communications Services, the new tenant may be unable to use the facility.
12. Any changes to the tower configuration (additions, removals, realignments of antennas) require pre-approval by the PSERN Operator Radio Communications Services Manager and may require amendments to the Sublease, if the changes are beyond what is authorized by the Sublease, and PSERN Operator agrees to such Sublease amendments. An inspection is required at the end of such work.
13. Equipment which presents an immediate hazard to the facility or individuals working on the facility may require deactivation until the hazard is removed. High power transmitters may also need to be deactivated when maintenance of the facility is being performed. The tenant shall be notified in advance of any such deactivation.
14. All PSERN Operator radio facilities are protected by locked doors and most have alarm systems. In some cases, on-site alarms are not obvious. Exceptions include sites with segregated 'guest space' where alarm systems may not be provided. For those facilities with alarms, prior notification of PSERN Operator Radio Communications Services shall be required before sites may be entered. Activation of a facility alarm shall result in the dispatch of police officers, the cost of which shall be borne by the tenant activating the alarm without providing prior notice of entry.
15. All site property shall be left clean and free of debris, trash and food scraps. If materials are brought in which become trash, the tenant bringing in the material shall be responsible for its removal.
16. All equipment installed in PSERN Operator facilities shall be properly licensed. All tenant FCC, IRAC and amateur radio licenses shall be posted.
17. Special on-site uses may be subject to additional limitations beyond those described herein. Special site users shall be notified of such additional limitations in writing.

**Emergency contacts are as follows:**

Day: \_\_\_\_\_

Night: \_\_\_\_\_

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**EXHIBIT E**  
**Prime Lease**

The Prime Lease is attached hereto.

**RADIO SITE LEASE AND ACCESS AGREEMENT  
BETWEEN SKYWAY WATER & SEWER DISTRICT  
AND  
KING COUNTY  
FOR THE PUGET SOUND EMERGENCY RADIO NETWORK (“PSERN”)**

**THIS RADIO SITE LEASE AND ACCESS AGREEMENT (“Lease”)** is made by and between Skyway Water & Sewer District, whose address is 6723 S. 124<sup>th</sup> St., Seattle, WA 98178, hereinafter referred to as “**Lessor,**” 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, hereinafter referred to as “**Lessee.**” Lessor and Lessee may jointly be referred to herein as the “**Parties**” or individually, a “**Party.**”

**WHEREAS,** Lessor is the owner of or has lawful control over a certain parcel of real property located at 6805 South 124<sup>th</sup> Street, Seattle, Washington 98178 (APN: 781280-1870), which is more specifically described in the attached **Exhibit A** (“**Property**”); and

**WHEREAS,** pursuant to that certain Lease Agreement dated February 9<sup>th</sup>, 1998, as amended by that certain First Amendment to Lease Agreement Between Skyway Water and Sewer District and Valley Communications Center fully executed on February 27, 2008, and that certain Second Amendment to Lease dated November 14, 2017 (collectively, the “**ValleyComm Lease**”), Lessor has leased a portion of the Property 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, generator, HVAC, utilities and associated equipment and improvements (“**ValleyComm Facilities**”); and

**WHEREAS,** Lessee intends to acquire a part of the ValleyComm Facilities owned by ValleyComm and sublet space on such acquired ValleyComm Facilities back to ValleyComm and ValleyComm’s tenants located thereon; simultaneously therewith Lessor intends to terminate the ValleyComm Lease so that Lessee may lease the space on the Property on which the ValleyComm Facilities are located; and

**WHEREAS,** Lessee desires to lease from Lessor a portion of Lessor’s Property on which the ValleyComm Facilities are located to construct, operate and maintain a communication facility and associated equipment and improvements, as well as obtain the right from Lessor to access the Property and install, operate and maintain utilities in conjunction therewith; and

**WHEREAS,** Lessee is procuring sites for such communication facilities, and along with other municipalities in King County is establishing the Puget Sound Emergency Radio Network (the “**PSERN System**”) to eventually provide public safety services in King County as authorized by Proposition 1 and King County Ordinances 17993, 18074 and 18075.

**NOW THEREFORE,** for and in consideration of the mutual promises set forth hereinafter and as provided for in the above-referenced recitals, which are made a part of this Lease, the Parties do hereby agree:

**1. PREMISES.**

(a) Lessor hereby (i) leases to Lessee approximately nine hundred ten (910) square feet of the Property for Lessee’s exclusive use for the installation, operation and maintenance of Lessee’s Communication Facilities (defined in Section 4 below and collectively, the “**Premises**”), and (ii) grants Lessee non-exclusive Easements (defined in Section 5(a)) for access and utilities on, under and across the Property, as generally described and depicted on the attached **Exhibit B**. In addition to the Premises and Easements, Lessor hereby grants Lessee temporary access to additional space near the Premises for staging purposes during Lessee’s construction activities, in location(s) to be agreed upon by the Parties.



(b) In the event Lessee desires to modify the Communication Facilities in a manner that requires additional space on the Property (“**Additional Premises**”), Lessee shall submit a written request to Lessor. Provided the Parties can agree on the location and size of the Additional Premises, and provided further that Lessor determines in its reasonable discretion that leasing such Additional Premises to Lessee does not diminish or hinder Lessor’s use of the Property, then Lessor shall not unreasonably withhold agreement to enter into an amendment to this Lease in order to memorialize the lease of the Additional Premises to Lessee, the terms for which shall be the same terms and conditions herein.

(c) The Parties hereby acknowledge that Lessor is currently using approximately one-hundred (100) square feet (8’ x 12’6”) in the southwest corner of the shelter, which is considered part of Lessee’s Communication Facilities, for storage purposes. As additional consideration for this Lease, Lessee agrees that Lessor shall retain the right to continue its exclusive use of such shelter space, non-exclusive use of any electrical power provided thereto, and non-exclusive use of any necessary access rights across the Premises thereto, during the Term (defined in Section 2(e)) of this Lease rent-free. The rights granted to Lessor provided in this Section 1(c) are exclusive to Lessor; such rights may not be assigned, sublet or transferred without Lessee’s prior written consent, which shall not be unreasonably withheld.

## 2. TERM.

(a) The initial term of this Lease shall be for a period of twenty-five (25) years, commencing on the Term Commencement Date (defined herein below), and terminating on the last day of the month in which the twenty-fifth anniversary of the Term Commencement Date occurs (“**Initial Term**”). The “**Term Commencement Date**” shall be the last date after both Lessor’s and Lessee’s authorized representatives have executed this Lease and on which all of the following conditions have been met: (i) the ValleyComm Lease and all subleases and licenses thereto are terminated by mutual consent of ValleyComm and Lessor on terms approved in writing by the Lessee; (ii) ValleyComm assigns through written agreement to Lessee and Lessee assumes from ValleyComm all or part of the ValleyComm Facilities; and (iii) ValleyComm and Lessee enter into a written agreement for ValleyComm’s sublease of space within the Premises for its continued operation of such ValleyComm Facilities that are not transferred to Lessee (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, Lessee shall have the right, upon written notice to Lessor, to deem this Lease null and void and of no further force or effect. The parties agree that they shall acknowledge in writing the Term Commencement Date as follows: Lessee shall notify Lessor in writing of the Term Commencement Date and within ten (10) business days of receipt thereof, Lessor shall acknowledge such date in writing as the Term Commencement Date and return such signed written instrument to Lessee.

(b) Lessee shall have the right to extend the term of this Lease for an additional three (3) periods of five (5) years each (each an “**Extension Term**”) subject to the following terms and conditions:

i. That at the time of the exercise of such right, as well as at the time of the beginning of the Extension Term, Lessee shall not be in default in the observance or performance of any of the material terms, covenants or conditions of this Lease with respect to a matter as to which written notice of default has been given and which has not been remedied within the applicable cure period set forth in this Lease.

ii. That such Extension Term shall be upon the same terms, covenants and conditions as in this Lease except for any mutually agreed changes.

iii. Each Extension Term shall be exercised automatically as long as Lessee does not deliver to Lessor a written notice of termination at least sixty (60) days prior to the end of the Initial Term or the end of the applicable Extension Term.



(c) If, at least sixty (60) days prior to the end of the final Extension Term, either Lessor or Lessee has not given the other written notice of its desire that the term of this Lease end at the expiration of the final Extension Term, then upon the expiration of the final Extension Term this Lease shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for annual terms thereafter (“**Annual Term(s)**”) until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Annual rental during such Annual Terms shall be equal to the rent paid for the last year of the final Extension Term.

(d) If Lessee remains in possession of the Premises after any termination of the Lease, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on twenty (20) days’ written notice given at any time by either Party. All provisions of this Lease, except those pertaining to the term, shall apply to the month-to-month tenancy.

(e) The Initial Term, any Extension Terms, any Annual Terms and any holdover terms are collectively referred to in this Lease as the “**Term.**”

### 3. RENTAL RATE.

(a) Lessee’s obligation to pay rent under this Lease shall commence on the first day of the month following the Term Commencement Date, unless the Term Commencement Date is the first day of the month, in which case that shall be the date Lessee’s obligation to pay rent shall commence (“**Rent Commencement Date**”).

(b) As used herein, a “**lease year**” shall be February 1<sup>st</sup> through January 31<sup>st</sup> during the Term of this Lease. Annual rent shall be Eleven Thousand Seven Hundred and No/100 Dollars (\$11,700.00) per lease year (“**Rent**”) payable in advance. Rent shall be payable as follows: Rent for the first partial lease year (from the Rent Commencement Date until the next January 31<sup>st</sup>) shall be delivered to Lessor within forty-five (45) days after the date Lessee receives Lessor’s written acknowledgement confirming the Term Commencement Date. Thereafter, Rent shall be paid to Lessor annually in advance, on or before February 1<sup>st</sup> of each lease year until this 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 Lessee receives Lessor’s written acknowledgment confirming the Term 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 Lessee’s discretion. Rent shall be delivered to Lessor at the address set forth in Section 12 hereinafter or through electronic funds transfer to an account designated by the Lessor at the Lessor’s option.

(c) Rent shall increase by three percent (3%) of the then-current rental rate on each successive anniversary of the first February 1<sup>st</sup> annual payment during the Term of this Lease.

### 4. USE.

(a) The Premises, as generally described and depicted on the attached **Exhibit B**, shall be used for the purpose of the construction, installation, operation, maintenance, repair, replacement, upgrade, update, addition, modification and removal of the communication facility, and associated equipment and improvements, including but not limited to the ValleyComm Facilities Lessee acquires, generally described on **Exhibit C** (collectively, the “**Communication Facilities**”) for the PSERN System as it is presently designed or may hereinafter be modified or changed (“**Permitted Use**”).

(b) At all times after the date this Lease is fully executed by both Parties, Lessee shall have the right to (i) obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice, (ii) have the Property surveyed by a surveyor of its choice at a date and time agreeable to the



Lessor, which agreement shall not be unreasonably withheld, and (iii) enter upon the Property solely to perform and obtain, at Lessee's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigations or other tests or reports on, over, and under the Property, necessary to determine if Lessee's use of the Premises will be compatible with Lessee's engineering specifications, system, design, operations or Government Approvals at a date and time agreeable to the Lessor, which agreement shall not be unreasonably withheld. Copies of any and all title reports, surveys, soil borings, environmental investigations and other site data obtained under this paragraph shall be provided to the Lessor.

(c) Prior to performing any installation or construction work within the Premises, Lessee 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. Upon first obtaining Lessor's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, Lessor shall provide Lessee with Lessor's written authorization to make and sign as Lessor'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 Communication Facilities within the Premises. Lessor agrees to reasonably assist Lessee with such applications and with obtaining and maintaining the Government Approvals.

(d) Lessor's primary business purpose in ownership of the Property is to provide water utility services to its customers. As part of such use, Lessor owns and operates one or more water tanks on the Property. The Parties hereby acknowledge that this Lease does not grant Lessee any right to use space on any of the water tanks located on the Property.

## 5. ACCESS.

(a) As part of the consideration for this Lease, Lessor hereby grants Lessee nonexclusive easements on, over, under and across the Property for ingress, egress and utilities, between the public right of way and/or existing utility services located on or adjacent to the Property and the Premises, adequate to construct, install, operate, maintain, repair, replace, upgrade, update, and remove the Communication Facilities and utilities, including, but not limited to, the installation of power and telephone service cable, and to service the Premises at all times during the Term of this Lease (collectively, the "**Easements**"). The Easements provided hereunder shall have the same Term as this Lease plus such additional time as is reasonably necessary for the sole purpose of removing the Communication Facilities as described in Section 20 below.

(b) Lessee shall have the right to access the Premises, seven (7) days a week, twenty-four hours (24) hours a day, on foot, motor vehicle, including trucks, or by air over or along the Easements generally depicted in **Exhibit B**. Lessee shall provide Lessor telephonic notice a minimum of twenty-four (24) hours in advance of accessing the Property for routine matters. Notice of access to the Property for emergency matters shall be provided as soon as reasonably practical. The Lessor's telephone contact number for routine matters during normal business hours is 206-772-7343 and for emergency matters outside of normal business hours is 1-844-204-4170.

(c) Lessee shall have the right to construct improvements to secure the Premises and to control access to the Premises. Lessor may not access the Premises (except as is necessary to access the shelter space it has the continued right to use in accordance with Section 1(c) herein above), and Lessor may not allow any third-party to access the Premises, without Lessee's consent and without a representative of Lessee being present at the time of such access. Lessor shall not allow the placement, construction, or installation of any equipment or materials in the Premises without Lessee's prior written consent, which consent may be withheld at Lessee's sole discretion.



**6. UTILITIES.** Lessee shall pay all charges for power and telephone utilities in its sole use or in a prorata share for joint use, which shall be provided to the Premises. In the event Lessee cannot secure its own metered electrical supply, Lessee may submeter from Lessor, in which event Lessee will read the submeter on an annual basis and will reimburse Lessor on every February 1st for the electricity used by Lessee during the prior calendar year.

**7. MAINTENANCE, REPAIR AND ABATEMENT.**

(a) Lessee shall maintain the Premises and the Communication Facilities (except for the shelter space Lessor has the right to use in accordance with Section 1(c)) in good repair and tenantable condition during the Term of this Lease. Except as expressly set forth in this Lease, Lessor shall not maintain, repair or otherwise touch or interfere with Lessee's Communication Facilities without Lessee's prior consent; provided that, in the event of an emergency posing an imminent threat of bodily injury or property damage, Lessor may take action necessary to abate the threat and shall give Lessee notice of such actions taken as soon as is reasonably possible thereafter.

(b) Lessor shall maintain the Property (except for the Premises), including access to the Premises, and the shelter space it has the right to use in accordance with Section 1(c) in good repair and tenantable condition during the Term of this Lease.

**8. ASSIGNMENT/SUBLEASE.**

(a) Lessee may not assign, sublease, or transfer in whole or in part its interest in this Lease or apportion the Easements granted herein without Lessor's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; provided that Lessee shall have the right without Lessor's consent to sublet space within the Premises and grant use of the Easements 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.

(b) Lessor acknowledges that Lessee 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, Lessee may assign its interest in this Lease, without the Lessor'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.

(c) Should Lessor sell, lease, transfer, or otherwise convey all or any part of the Property that is the subject of this Lease to any transferee other than Lessee, such transfer shall be subject to this Lease.

(d) 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.

**9. DISASTER.** In the event the Premises is destroyed or damaged by fire, earthquake or other casualty so as to render the Premises unfit for use as provided for herein, Lessee may terminate this Lease and shall be reimbursed for any unearned Rent that has been paid less any utility costs owing. If the Lessee believes it is feasible to relocate the Communication Facilities to a different location on the Property, the Parties agree that the Premises will be relocated. If the Lessor determines there is space available on the Property, the Lessor will provide an interim site for Lessee to locate temporary, mobile Communication Facilities and equipment as necessary to continue service during repair or relocation of the Premises or Communication Facilities. A survey will be prepared for the relocated Premises (including the Easements) and the survey will replace **Exhibit B** attached hereto until such time as repair or relocation of the Premises and/or Communication Facilities are completed.

**10. HAZARDOUS SUBSTANCES.**

(a) Lessor represents and warrants to Lessee that Lessor is not aware of any Hazardous Substances (as defined in Section 10(d)) located on the Property in soil, groundwater, or other environmental media, or in violation of applicable laws. Lessee and Lessor agree that they will not place, dispose of or store any Hazardous Substance on the Premises or the Property in violation of applicable laws. The Parties acknowledge that, consistent with this Section, Lessee may be installing on the Premises backup power devices such as batteries and generators with petroleum or propane fuel.

(b) Lessee shall indemnify, defend and hold harmless Lessor with respect to any and all claims, demands, suits, causes of action, judgments, damages, costs, attorney fees, government orders, penalties, or other requirements (hereafter "**Claims**") arising from the release of any Hazardous Substances on the Premises caused by Lessee, its employees or agents, except to the extent that a Claim is caused by the Lessor, its employees or agents, another tenant, its employees or agents, or a third party.

(c) Lessor shall indemnify, defend and hold harmless Lessee with respect to any and all Claims arising from the presence or release of any Hazardous Substances on the Property, except to the extent that a Claim is caused by Lessee, its employees or agents.

(d) For purposes of this Lease, "**Hazardous Substances**" shall mean any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) and implementing regulations, any "hazardous substance" under the Washington Model Toxics Control Act (Ch. 70.105D RCW) and implementing regulations, and any "hazardous substance" or "hazardous waste" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§ 9602 et seq.) and implementing regulations, as these laws are amended from time to time; underground storage tanks, whether empty, filled or partially filled with any substance; asbestos; urea formaldehyde foam insulation; PCBs; and any other substance, waste, material or chemical deemed or defined as hazardous, toxic, a pollutant, contaminant, dangerous or potentially dangerous, noxious, flammable, explosive, or radioactive, the removal of which is required or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated or penalized by any federal, state, county, municipal or other local governmental statute, regulation, ordinance or resolution as these laws are amended from time to time.

**11. ALTERATIONS.** Lessee may make any alterations, additions, or improvements in or to said Premises at any time during the Term of this Lease so long as it complies with all applicable laws, and so long as it does not interfere with the current use of the Property by Lessor or another of Lessor's tenants; provided that Lessee shall not increase the height or size of the tower, shelter or fuel storage tank without Lessor's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

**12. NOTICES AND MANAGEMENT.** Wherever in this Lease written notices are to be given or made, they will be sent by certified mail, return receipt requested to the address listed below unless a different address shall be designated in writing and delivered to the other Party.

Lessor: Skyway Water & Sewer District  
Attn: Cynthia Lamothe  
6723 S. 124<sup>th</sup> St.  
Seattle, WA 98178

Phone: 206-772-7343  
[cynthial@skywayws.org](mailto:cynthial@skywayws.org)



Lessee: King County Facilities Management Division  
Real Estate Services  
Attention: Leasing Supervisor  
Re: Skyway PSERN Lease  
500 Fourth Avenue, Suite 830  
Seattle, WA 98104

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

Phone: 206-477-9373  
Email: Gail.Houser@kingcounty.gov

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

Each Party shall appoint a manager to have responsibility for activities carried out under this Lease and to resolve any disputes that may arise between the Parties under Section 21.

**13. WASTE AND NUISANCE PROHIBITED.** During the Term of this Lease, Lessee shall comply with all applicable laws affecting the Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Premises. Lessee shall not commit, or suffer to be committed any waste on the Premises, or any nuisance.

**14. MECHANIC'S LIENS.** Lessee agrees to pay when due all sums that may become due for any labor, services, materials, supplies, or equipment furnished at the instance of the Lessee, in, upon or about the Premises and which may be secured by any mechanic's, materialman's or other lien against the Premises and/or Lessor's interest therein, and will cause each such lien to be fully discharged and released at the time of any obligation secured by any such lien matures and/or becomes due. Provided that if the Lessee in good faith disputes the claim of lien, the Lessee may pursue such dispute in any lawful manner, provided that it bonds against such lien to the Lessor's reasonable satisfaction. Lessor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facilities or any portion thereof.

**15. SIGNS.** Lessee may erect or install any exterior signs or symbols on the Premises required by applicable laws without Lessor's approval. Any signs or symbols that are not required by applicable laws must first be approved by Lessor prior to Lessee's installation thereof, which approval shall not be unreasonably withheld, delayed or conditioned. Any signs or symbols so placed on the Premises, in accordance with the terms of this Section, shall be removed by the Lessee at the termination of this Lease and the Lessee shall repair any related damage or injury to the Premises. If not so removed by Lessee, the Lessor may have the same removed and repairs performed at Lessee's expense.

**16. CONDEMNATION.** If the Premises, or any part thereof the loss of which impairs the utility of the Premises to a significant extent, are appropriated or taken for any public use by virtue of eminent domain or



condemnation proceeding, or by conveyance in lieu thereof, or if by reason of law or by court decree, whether by consent or otherwise, the use of the Premises by Lessee for any of the specific purposes herein before referred to shall be prohibited, Lessee shall have the right to terminate this Lease upon written notice to Lessor, and Rent shall be due only to the time when the Lessee surrenders possession of the Premises. In the event of a partial taking, if Lessee is entitled to, but does not elect to, terminate this Lease, it shall continue in possession of that part of the Premises not so taken under the same terms and conditions hereof, except that there shall be an equitable reduction of the Rent payment hereunder. If it is feasible to relocate the Communication Facilities to a different location on the Property without any impairment to the quality of service provided by the Communication Facilities, the Parties agree that the Premises will be relocated. If it is feasible to relocate the Communication Facilities to a different location on the Property and there is an impairment to the quality of service provided by the Communication Facilities, Lessee may elect to either relocate the Premises to the different location or terminate this Lease as provided in this Section 16. A survey will be prepared for the relocated Premises (including the Easements) at Lessor's expense, and the survey will replace **Exhibit B** attached hereto. All compensation awarded or paid upon such a total or partial taking of the fee of the Premises shall belong to and be the property of Lessor, whether such compensation be awarded or paid as compensation for diminution in value of the leasehold or to the fee. Provided, however, Lessor shall not be entitled to any award made to Lessee for depreciation to and cost of removal or relocation of structures or equipment on the Premises provided that no award for such claims shall reduce the amount of any award made to Lessor.

#### **17. DEFAULT.**

(a) If Lessee should fail to remedy any default (i) in the payment of any sum due under this Lease within twenty (20) days after receipt of written notice, or (ii) in the keeping of any other term, covenant or condition herein with all reasonable dispatch, within a reasonable period of time no sooner than forty-five (45) days after receipt of written notice within which time frame said default has not been cured, then in any of such event(s), Lessor shall have the right, at its option, in addition to, and not exclusive of, any other remedy Lessor may have by operation of law, terminate this Lease upon written notice to Lessee. In such event(s) Lessee shall only be responsible for Rent and utilities through the date of termination.

(b) If Lessor should fail to remedy any default in the keeping of any term, covenant or condition herein with all reasonable dispatch, within a reasonable period of time no sooner than forty-five (45) days after receipt of written notice within which time frame said default has not been cured, then in any of such event(s), Lessee shall have the right, at its option, in addition to and not exclusive of any other remedy Lessee may have by operation of law, to remedy Lessor's failure to perform or terminate this Lease upon written notice to Lessor. In such event(s): (i) Lessor shall be responsible for any costs incurred by Lessee in remedying Lessor's default, and/or (ii) Lessee shall only be responsible for Rent and utilities through the date of termination.

#### **18. TERMINATION.**

(a) Lessee retains the right to terminate this Lease for any reason whatsoever upon ninety (90) days written notice to Lessor. Lessee also retains the right to terminate this Lease upon thirty (30) days written notice to Lessor if (i) Lessee determines that it cannot obtain the Government Approvals required to employ the Premises for the use described in this Lease, or if any necessary approval is revoked or terminated, or (ii) if Lessee or Lessee'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. In event of termination of this Lease as provided for in this Section, Lessee shall remove all personal property and repair any damage to the Property or its facilities that Lessee caused, at its sole expense, as provided for in Section 20.

(b) In the event Lessor decides to sell the Property, such sale shall be subject to the terms set out in Section 8(c) and (d) herein above; provided that if a bona-fide purchaser conditions its offer to purchase on the discontinuance and removal of all communication facilities from the Property, Lessor shall have the right to terminate this Lease on no less than two (2) years prior written notice to Lessee. Upon transfer of ownership



of the Property, such purchaser shall assume all of the Lessor's rights and obligations herein, and this Lease will remain in full force and effect until its expiration or earlier termination, as provided for herein.

**19. LITIGATION COSTS/VENUE.** If any legal action is instituted to enforce or construe this Lease, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney fees and expenses. Venue of any legal action brought hereunder shall be in King County, State of Washington.

**20. REMOVAL OF PERSONAL PROPERTY BY LESSEE.**

(a) All portions of the Communication Facilities acquired from ValleyComm and brought onto the Property by Lessee will be and remain Lessee's personal property during the Term of this Lease. During the Term of this Lease and upon termination, Lessee shall have the right to remove some or all of its personal property, whether or not attached to the Premises, provided that such may be removed without serious damage to the Property. All damage to the Property caused by removal of Lessee's personal property shall be promptly restored or repaired by Lessee.

(b) Upon the expiration or early termination of this Lease, Lessee shall restore the Premises to the condition that existed prior to Lessee's occupancy, reasonable wear and tear excepted, including (subject to the terms of Section 20(c) and (d)) removal of Lessee's personal property/equipment in accordance with Section 20(a) above, but excluding the replacement of trees or other landscaping that was removed during the construction process. This work shall be done at Lessee's sole expense and to the reasonable satisfaction of Lessor. All personal property not so removed within forty-five (45) days after the expiration or termination of this Lease shall be deemed abandoned by Lessee.

(c) Upon the expiration or earlier termination of this Lease, Lessee shall leave on the Property all of the facilities acquired from ValleyComm, which are listed on **Exhibit C** attached hereto, including but not limited to all extensions, improvements and modifications thereto, and Lessee at its option may leave on the Property any underground utility cables and conduit installed by or at Lessee's direction, in which case Lessor shall assume ownership thereof without the need for any additional documentation, and such facilities will become part of Lessor's Property.

(d) Notwithstanding the foregoing, if this Lease is terminated due to the uncured default of Lessor, then Lessee shall have the option to retain ownership of any or all of the facilities acquired from ValleyComm after the termination of this Lease. If Lessee elects to retain ownership as provided herein, then Lessee shall notify Lessor thereof together with its termination notice given in accordance with Section 17(b), in which case Lessee shall remove such facilities from the Property in accordance with the terms of Section 20(b) above.

**21. DISPUTE RESOLUTION.**

(a) In the event of a dispute between the Lessor and Lessee arising by reason of this Lease, the dispute shall first be referred to managers designated by Lessor and Lessee to have oversight over the administration of this Lease. The officers or managers shall meet within a reasonable time, not later than ten (10) calendar days after either Party's request for a meeting, whichever request is first, and the Parties shall make a good faith effort to achieve a resolution of the dispute.

(b) If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties may agree to refer the matter to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the Parties.

(c) If the Parties fail to achieve a resolution of the dispute through meeting or mediation within the cure periods provided for in Section 17, either Party may seek any and all remedies at law against the other Party for default or breach of this Lease.



**22. INSURANCE.**

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

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

(c) If at any time during the Term of this Lease Lessee does not maintain a fully funded Self-Insurance program in accordance with applicable law, Lessee will maintain Commercial General Liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include Lessor as an additional insured with respect to claims arising out of or related to this Lease.

(d) If either Lessee or Lessor is not a governmental agency which maintains a fully funded self-insurance program in accordance with applicable law, such Party will maintain commercial general liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include the other Party as an additional insured with respect to claims arising out of or related to this Lease.

(e) Lessor shall carry "All Risk" property insurance in an amount equal to the full replacement value of its improvements on the Property.

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

(g) Notwithstanding any language to the contrary contained in this Lease, Lessor and Lessee 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.

**23. TAXES.** Lessor shall pay all real property taxes, assessments, or levies assessed against the Property, except the Communication Facilities owned by Lessee. Lessee shall pay all taxes, assessments or levies that shall be assessed on, or with respect to, the Communication Facilities on the Premises owned by Lessee.

**24. EXECUTION AND APPROVAL.** The Parties warrant that the officers and individuals executing below have been duly authorized to act for and on behalf of the Party for purposes of executing this Lease and granting the Easements.

**25. INDEMNITY AND HOLD HARMLESS.**

(a) Lessee agrees to indemnify and hold Lessor harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessor, 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 Lessee's exercise of rights and privileges granted by this Lease, except to the extent of the Lessor's negligence.

(b) Lessor agrees to indemnify and hold Lessee harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessor agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessee, 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 Lessor's exercise of rights and privileges granted by this Lease, except to the extent of the Lessee's negligence.

(c) Where such Claims result from the concurrent negligence of the Parties, the provisions provided in this Section shall be valid and enforceable only to the extent of each Party's negligence.

(d) Each of the Parties agrees that its obligations under this Section 25 extend to any Claim brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such Claims under the industrial insurance provisions of Title 51 RCW.

(e) In the event that any of the Parties incurs any judgment, award, and/or cost arising therefrom, including attorney fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's negligence.

(f) The provisions of this Section 25 do not apply to Claims that are subject to Section 10.

## **26. INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, Lessor will provide Lessee with a list of all existing radio frequency user(s) on the Property and the frequencies used by each to allow Lessee to evaluate and avoid the potential for interference. Lessee warrants that its use of the Premises will not interfere with existing radio frequency user(s) so disclosed by Lessor at the time Lessee begins its use of the Premises, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws, licenses and manufacturers' specifications.

(b) Without Lessee's prior written consent, Lessor will not grant a lease, license or any other right to any third party for the use of the Property if such use may in any way adversely affect or interfere with Lessee's equipment, Lessee's operations, or Lessee's rights under this Lease.

(c) Lessor agrees to require all users of radio frequencies on the Property, including Lessor, subject to the terms and conditions of any pre-existing leases, to: (i) comply with the rules, regulations, and licenses of the Federal Communications Commission ("FCC"), (ii) cease operating any equipment which causes interference within twenty-four (24) hours after receipt of notice of interference, except for intermittent testing to determine the cause of such interference, until the interference has been corrected, (iii) agree in all future leases, licenses and agreements the requirement to comply with terms that are substantially equivalent to the non-interference requirements in this Section 26, and (iv) reasonably cooperate with other users in order to troubleshoot the cause of any radio frequency interference which may arise. Notwithstanding the foregoing, the last user to add equipment on the Property that causes radio frequency interference shall have primary responsibility to investigate the cause of the interference and to incur the expense to cure the interference. If the interference cannot be cured using commercially reasonable efforts, such user shall remove from the Property the equipment that causes the interference.



(d) For the purposes of this Lease, “**interference**” includes harmful interference as defined by the FCC, and any use on the Property that causes physical obstruction with the use of the Premises.

**27. NON-DISCRIMINATION.** Lessee and Lessor, 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. Lessee and Lessor 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 Section 12.16.125. Lessee 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.

**28. MISCELLANEOUS.**

(a) **NON-WAIVER:** No waiver by either Party of any of the terms of this Lease shall be construed as a waiver of the same term or other rights of that Party in the future.

(b) **ENTIRE AGREEMENT:** This Lease contains terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Lease. No modification or amendment to this Lease shall be valid until put in writing and signed by both Parties with the same formalities as this Lease.

(c) **HEADINGS:** The section headings appearing in this Lease have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.

(d) **COUNTERPARTS:** This Lease may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

(e) **SEVERABILITY; INVALIDITY OF PROVISIONS:** If any parts, terms or provisions of this Lease are held by the courts to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of this Lease, the remainder of this Lease being valid and enforced to the fullest extent permitted by law. If it should appear that any part, term or provision of this Lease is in conflict with any applicable laws, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Lease shall be deemed modified to conform to such statutory provision.

(f) **USE OF TERMS:** Whenever the singular number is used in this Lease and whenever required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word “person” shall include corporation, partnership, limited liability company, firm, association or other entity.

(g) **SUCCESSORS AND ASSIGNS:** This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives and assigns.

(h) REPRESENTATIONS AND WARRANTIES: Lessor represents, warrants and agrees that: (i) Lessor solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license, and has the full right, power and authority to grant this Lease, including the Easements, to Lessee; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Lessee's rights under this Lease; (iii) as long as Lessee is not in default beyond any applicable cure period, Lessor grants to Lessee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; and (iv) Lessor's execution and performance of this Lease will not violate any laws, covenants or the provisions of any mortgage, lease or other agreement binding on Lessor.

(i) MEMORANDUM OF LEASE: Lessor agrees to sign a short form Memorandum of Lease that Lessee may record at Lessee's expense.

(j) GOVERNED BY LAWS OF STATE OF WASHINGTON: This Lease shall be governed by the laws of the State of Washington.

(k) FAILURE TO INSIST UPON STRICT PERFORMANCE: The failure of either Party to insist upon strict performance of any of the terms or conditions of this Lease shall not constitute a waiver thereof.

(l) EXHIBITS: This Lease is subject to the terms and conditions of the following exhibits, which are attached hereto and by this reference made a part hereof:

EXHIBIT A	Legal Description of Property
EXHIBIT B	Depiction of Premises and Easements
EXHIBIT C	Communication Facilities

[SIGNATURES ON FOLLOWING PAGES]

King County Lease #: PSERN-10  
King County Site Name: Skyway

**IN WITNESS WHEREOF**, the Parties have caused this Lease to be executed on the date and year opposite their signature blocks.

**Lessor:**  
SKYWAY WATER & SEWER DISTRICT

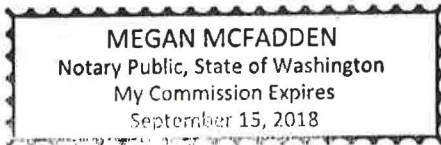
**DATED:** 2-28-18

By: Cynthia J. Lamothe  
Name: Cynthia J. Lamothe  
Title: General manager

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING         )

On this 28 day of February, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Cynthia Lamothe, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument, and that the seal affixed is the seal of said County.

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



Megan MCFadden  
**NOTARY PUBLIC** in and for the State of Washington, residing at Burien.  
My commission expires: 9/15/18

**DATED:** 2/28/18



King County Lease #: PSERN-10  
King County Site Name: Skyway

**Lessee:**  
KING COUNTY,  
a political subdivision of the State of Washington

DATED: 5/8/2018

By: \_\_\_\_\_  
Name: Anthony O. Wright  
Title: Director, Facilities Management Division

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING        )

On this 8<sup>th</sup> day of May, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Anthony O. Wright, Director, Facilities Management Division, for King County, to me known to be the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the seal of said County.

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

Catherine Hicks  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle, WA  
My commission expires: Apr. 12, 2019

DATED: 8 May 2018



Approved as to form:  
Ka M She  
Busch Law Firm PLLC

King County Lease #: PSERN-10  
King County Site Name: Skyway

**EXHIBIT A**  
**(Legal description of Property)**

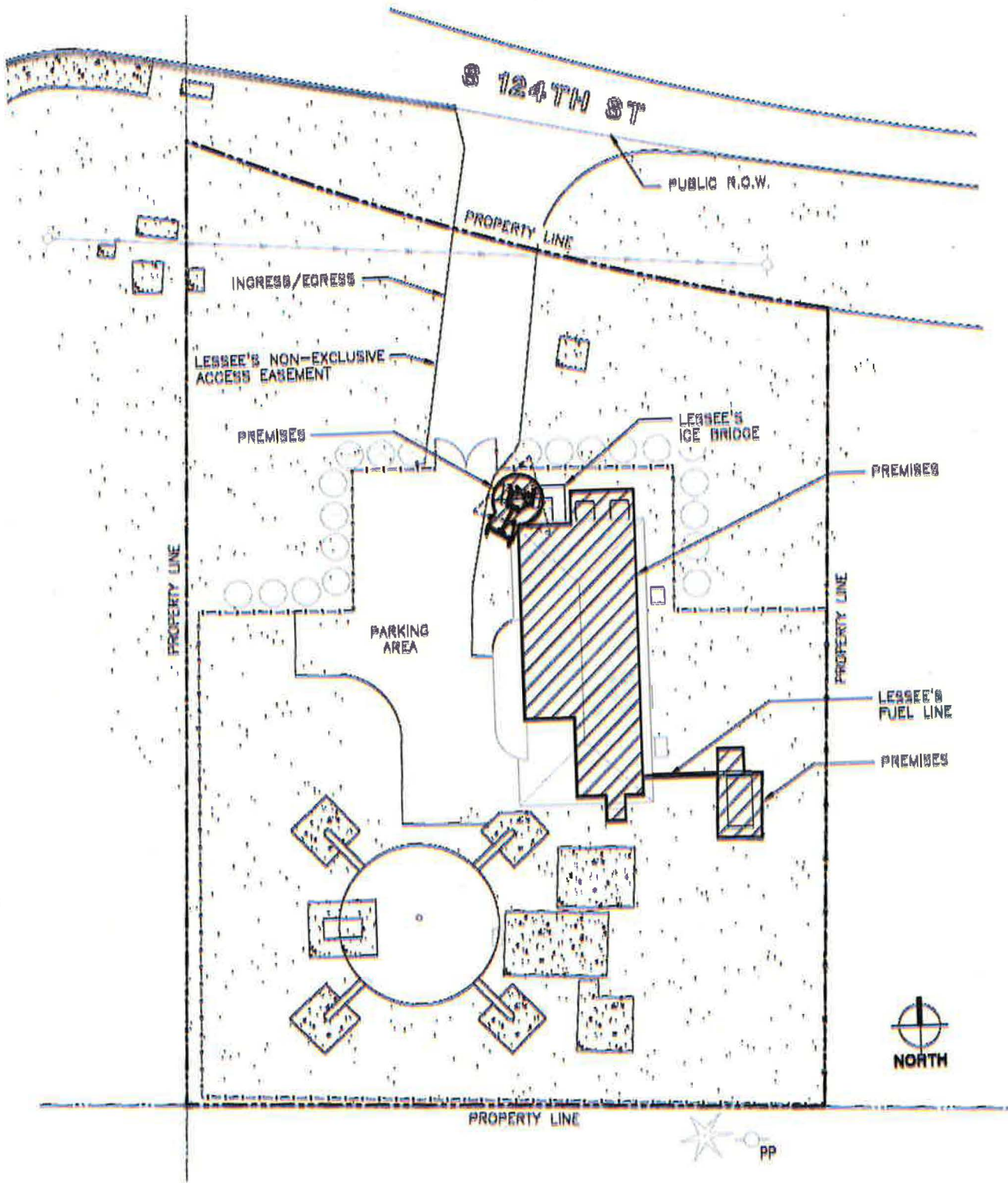
**Legal Description of Lessor's Real Property:**

LOTS 1 AND 2, BLOCK 21, SKYWAY PARK ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 40 OF PLATS, PAGES 6 THOURGH 9, INCLUSIVE, RECORDS OF KING COUNTY, SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

APN: 781280-1870

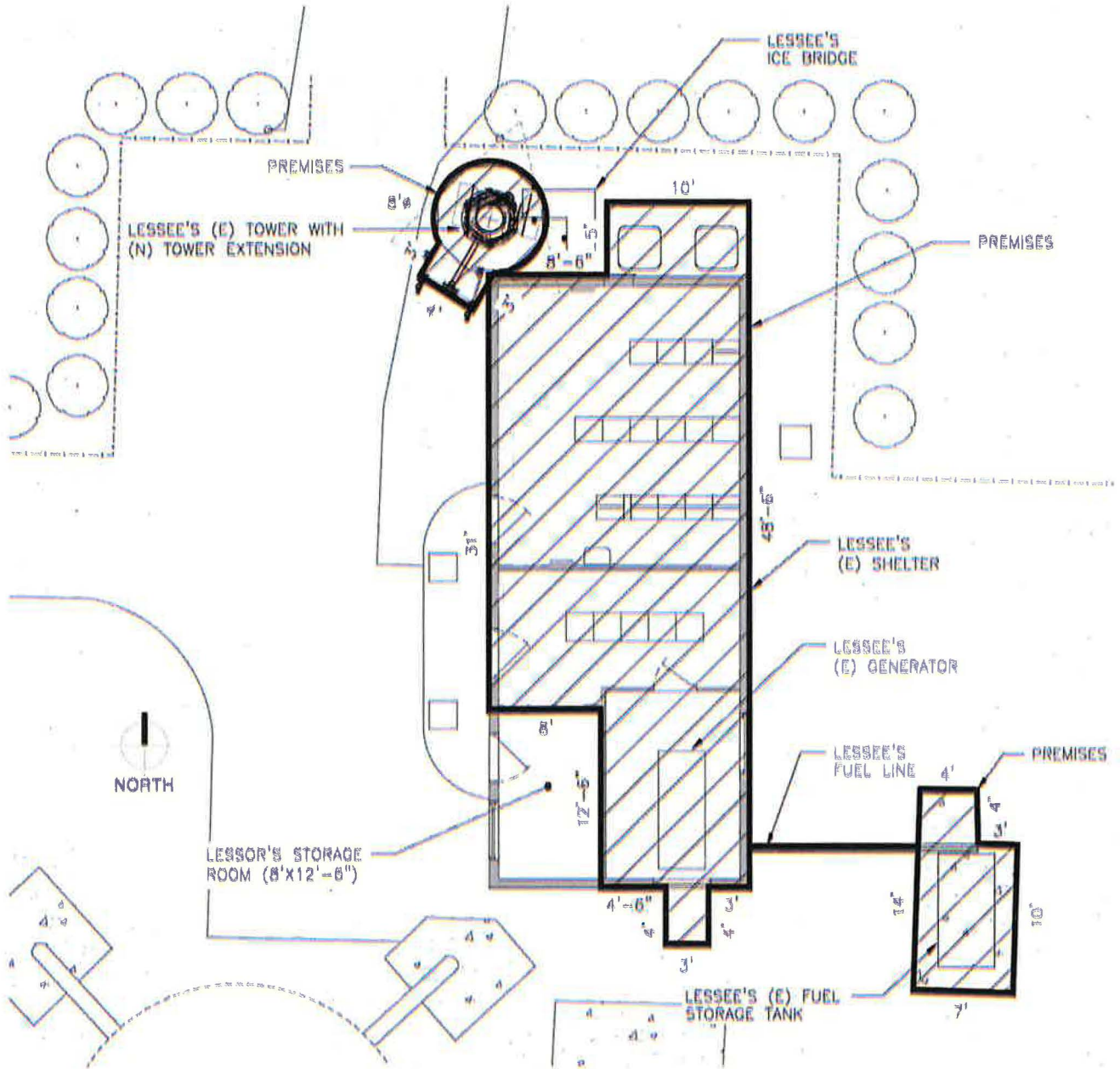
Address: 6805 S. 124<sup>th</sup> St., Seattle, WA 98178

**EXHIBIT B**  
(Page 1 of 2)  
(Depiction of Premises and Easements)





**EXHIBIT B**  
(Page 2 of 2)



**EXHIBIT C**  
**(Communication Facilities)**

**Existing Communication Facilities being acquired from ValleyComm (ValleyComm Facilities):**

- Fuel Tank
- Generator
- HVAC
- Shelter
- Tower
- Utilities

**Extensions, Improvements and Modifications Lessee intends to make to the ValleyComm Facilities listed above, which are hereby approved by Lessor in accordance with the terms of Section 11 of this Lease:**

10ft extension to the existing Tower

**New Communication Facilities to be installed within the Premises:**

- Two (2) 3ft High Performance MW dishes
- Two (2) 21ft omni directional antennas
- Two (2) 5ft panel antennas
- One (1) Tower Top Amplifier
- Communications equipment, cabinets, back-up power batteries, radios, coaxial cables, conduits, utility lines, and associated equipment and facilities.

The Communication Facilities described above may be maintained, repaired, replaced, upgraded, modified or removed without Lessor's consent, except as otherwise specifically set forth in Section 11 of this Lease.



**Certificate Of Completion**

Envelope Id: C430D3028F32444782C943693B823E57	Status: Completed
Subject: Complete with DocuSign: Ordinance 19588.docx, Ordinance 19588 Attachment A.pdf	
Source Envelope:	
Document Pages: 2	Signatures: 3
Supplemental Document Pages: 50	Initials: 0
Certificate Pages: 5	Envelope Originator:
AutoNav: Enabled	Cherie Camp
Envelopeld Stamping: Enabled	401 5TH AVE
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	SEATTLE, WA 98104
	Cherie.Camp@kingcounty.gov
	IP Address: 198.49.222.20

**Record Tracking**

Status: Original	Holder: Cherie Camp	Location: DocuSign
4/5/2023 6:09:10 PM	Cherie.Camp@kingcounty.gov	
Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: King County-Council	Location: DocuSign

**Signer Events**

Dave Upthegrove  
dave.upthegrove@kingcounty.gov  
Chair  
Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
  
E76CE01F07B14EF...  
Signature Adoption: Uploaded Signature Image  
Using IP Address: 67.160.80.216

**Timestamp**

Sent: 4/5/2023 6:14:17 PM  
Viewed: 4/6/2023 3:17:45 PM  
Signed: 4/6/2023 3:18:03 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 4/6/2023 3:17:45 PM  
ID: 652fbf5b-a295-44d9-8ce8-1ad107d07839

Angel Foss  
Angel.Foss@kingcounty.gov  
Deputy Clerk of the Council  
King County Council  
Security Level: Email, Account Authentication (None)

DocuSigned by:  
  
C267B914088E4A0...  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.222.20

Sent: 4/6/2023 3:18:05 PM  
Resent: 4/6/2023 3:31:12 PM  
Viewed: 4/6/2023 3:36:51 PM  
Signed: 4/6/2023 3:37:04 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 9/30/2022 11:28:30 AM  
ID: 020c9a0a-c529-4443-8490-bad8ecc7fb95  
Supplemental Documents:

Ordinance 19588 Attachment A.pdf

Viewed: 4/6/2023 3:37:00 PM  
Read: Not Required  
Accepted: Not Required

Dow Constantine  
Dow.Constantine@kingcounty.gov  
King County Executive  
Security Level: Email, Account Authentication (None)

DocuSigned by:  
  
4FBCAB8196AE4C6...  
Signature Adoption: Uploaded Signature Image  
Using IP Address: 198.49.222.20

Sent: 4/6/2023 3:37:07 PM  
Viewed: 4/12/2023 11:53:14 AM  
Signed: 4/12/2023 11:53:25 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 4/12/2023 11:53:14 AM  
ID: 2a99deab-357e-4e1f-84cf-60a3d2c65a25

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Kaitlyn Wiggins kwiggins@kingcounty.gov Executive Legislative Coordinator King County Executive Office Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block;"><b>COPIED</b></div>	Sent: 4/6/2023 3:37:08 PM Viewed: 4/6/2023 4:11:30 PM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	4/5/2023 6:14:17 PM
Envelope Updated	Security Checked	4/6/2023 3:31:11 PM
Envelope Updated	Security Checked	4/6/2023 3:31:11 PM
Certified Delivered	Security Checked	4/12/2023 11:53:14 AM
Signing Complete	Security Checked	4/12/2023 11:53:25 AM
Completed	Security Checked	4/12/2023 11:53:25 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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