

**ATTACHMENT A:**

**LEASE AGREEMENT**

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** ("Lease") is entered into as of the Effective Date (as defined below), by and between the **CITY OF KENT**, a Washington municipal corporation ("Landlord"), and **KING COUNTY**, a political subdivision of the State of Washington, having offices for the transaction of business at 500 Fourth Avenue, Suite 830, Seattle, Washington 98104 ("Tenant"), for a wireless communications facility located at 12523 Southeast 286<sup>th</sup> Place, Auburn, Washington ("Joint Use 3.5 Million Tank").

### BACKGROUND

A. Landlord is the owner in fee simple of a parcel of land, and a one hundred sixty foot (160') lattice tower (the "Tower"), located in the City of Auburn, King County, Washington, legally described on the attached **Exhibit A** (the "Property").

B. Tenant desires to lease that portion of the Property and space on the Tower as depicted on the attached **Exhibit B**, together with a nonexclusive access easement, as described on the attached **Exhibit C**, to construct, operate and maintain a communication facility and associated equipment and improvements, as well as to obtain the right from Landlord to access the property and install utilities in conjunction therewith.

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

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

### AGREEMENT

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

1. Leased Premises. Landlord leases to Tenant and Tenant leases from Landlord that portion of the Property and space on the Tower as depicted on the attached **Exhibit B** (the "Premises") together with a non-exclusive easement for ingress, egress and utilities over the Property as depicted on **Exhibit B** and described on the attached **Exhibit C** (the "Access Easement"). In addition to the Premises, Landlord hereby grants Tenant temporary access to additional space near the Premises for staging purposes during Tenant's construction activities, in location(s) to be agreed upon by the parties.

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

2. Term. The term of this Lease shall be for a period of twenty-five (25) years, commencing on the Rent Commencement Date, as defined in Section 3.a below, and terminating on the last day of the month prior to the twenty-fifth anniversary of the Rent Commencement Date ("Term").

### 3. Rent.

a. Tenant's obligation to pay rent under this Lease shall commence upon the date Tenant commences construction of the Improvements, as defined in Section 4 below, on the Premises (the "Rent Commencement Date"). The parties agree that they shall acknowledge in writing the Rent Commencement Date as follows: Tenant shall notify Landlord in writing of the date it commences construction of the Improvements on the Premises and within ten (10) business days of receipt thereof, Landlord's authorized representative shall acknowledge such date in writing as the Rent Commencement Date and return such signed written instrument to Tenant.

b. As used herein, a "lease year" shall be January 1<sup>st</sup> through December 31<sup>st</sup> during the Term of this Lease. Rent shall be Four Thousand Three Hundred Twenty and No/100 Dollars (\$4,320.00) per lease year ("Rent"), payable in advance. Rent shall be payable as follows: Rent for the first partial lease year (from the Rent Commencement Date until the next December 31<sup>st</sup>) shall be delivered to Landlord within forty-five (45) days after the date Tenant receives Landlord's written acknowledgement confirming the Rent Commencement Date. Thereafter, Rent shall be paid to Landlord annually in advance, on or before January 1<sup>st</sup> of each lease year until the Lease expires or is terminated; provided that if the first full lease year will commence prior to the due date of Rent for the first partial lease year, then the Rent for the first full lease year shall also be due and payable within forty-five (45) days after the date Tenant receives Landlord's written acknowledgment confirming the Rent Commencement Date. Rent for partial lease years shall be prorated and if Rent is ever overpaid it shall be either refunded or applied to future payments at Tenant's discretion.

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

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

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

f. Rent, and all other consideration to be paid or provided by Tenant to Landlord shall constitute Rent and shall be paid or provided without offset, except as specifically provided for in Section 3.g below.

g. Notwithstanding anything to the contrary contained in this Lease, in consideration of Lessee's lease of Shelter space to Lessor, as more specifically defined and provided for in Section 5.a(4) herein below, Lessor agrees to waive Lessee's obligation to pay Rent from the Rent Commencement Date until the first anniversary of the Rent Commencement Date.

4. Use of Premises.

a. Tenant may use the Premises for the construction, installation, operation, maintenance, repair, replacement, upgrade, update, addition, modification and removal of the communications facilities, and associated equipment and improvements, generally depicted on **Exhibit B** and described on the attached **Exhibit D** (collectively, the "Improvements") for the PSERN System as it is presently designed or may hereinafter be modified or changed ("Permitted Use"). Tenant shall use the Premises for no other purpose.

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

c. Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice. Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals. Before performing any of the work described in this Section 4.c, Tenant must receive prior e-mailed approval from Landlord's Public Works Director or authorized representative.

5. Tenant Improvements.

a. (1) Tenant may improve the Premises by constructing the Improvements as depicted on **Exhibit B**. Tenant is responsible to provide all labor, materials, and equipment necessary for the Improvements. Prior to commencing construction, Tenant shall submit plans and specifications drawn to scale for all Improvements to Landlord for Landlord's written approval, which approval shall not be unreasonably withheld by Landlord. Construction, installation, or alteration of Improvements shall not be commenced until plans for such work have been approved in writing by the Landlord and all necessary permits have been properly issued. Landlord's Public Works Department shall give such approval or provide Tenant with its requests for changes within thirty (30) business days of Landlord's receipt of Tenant's work plans. The plan and specifications review schedule described above does not apply to the City of Kent acting as a governmental entity issuing permits and other approvals

for the work Tenant is requesting to perform, and Tenant shall pay all permit costs in addition to Rent described in Section 3.

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

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

(4) As part of the Improvements, Tenant intends to construct an equipment shelter on the Premises (the "Shelter"). Upon completion of the Shelter, Tenant shall remove all debris left from the construction and installation of the Shelter at Tenant's own cost. Tenant hereby agrees to lease to Landlord, on terms and conditions mutually acceptable to both parties, space within the Shelter for Landlord's future installation and operation of Landlord's radio equipment. Such leased space shall include approximately one hundred (100) square feet of floor space, and use of Tenant's electrical power and back-up emergency power for Landlord's radio equipment, free of rent; provided that Landlord shall at all times be solely responsible, at its sole expense, for installation, operation, maintenance and repair of its radio equipment within the Shelter. The rights granted to Landlord in this Section are not transferable or assignable without Tenant's prior written consent, in Tenant's sole discretion.

b. (1) Unless the parties otherwise agree in writing, Tenant shall remove the Improvements from the Premises upon termination of the Lease. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Property, including use of the Property by Other Providers as described in Section 6.a below, Landlord, or any of Landlord's assignees.

(2) Upon removal of the Improvements, as provided above in Section 5.b(1), Tenant shall restore all affected areas of the Property, the Premises and the Access Easement, *normal wear and tear excluded*, to the reasonable satisfaction of Landlord.

(3) All costs and expenses for the removal of the Improvements and restoration of the Property, the Premises and the Access Easement shall be borne by Tenant, and Tenant shall hold Landlord harmless from any portion thereof.

(4) Notwithstanding anything to the contrary contained in this Lease, if Landlord's radio equipment has been installed and remains in the Shelter in accordance

with the terms of Section 5.a(4) herein above, then upon the expiration of this Lease, including all extensions, the Shelter will remain on the Property and become Landlord's personal property, "as is, where is," without any representations or warranties, and without the need for any additional documentation for the transfer of ownership thereof.

6. Use by Other Providers.

a. Tenant shall cooperate with each new other communications provider that Landlord leases to ("Other Provider(s)") in connection with the Other Provider locating and placing its antennae and other facilities on the Property, including but not limited to use of space on the Tower.

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

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

8. Maintenance.

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

b. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not maintain, repair or otherwise touch or interfere with Tenant's Improvements without Tenant's prior written consent; provided that, in the event of an emergency posing an imminent threat of bodily injury or property damage, Landlord may take action necessary to abate the threat and shall give Tenant notice of such actions taken as soon as is reasonably possible thereafter.

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

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

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

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

13. Interference.

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

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

c. In the event that an Other Provider requests a lease from Landlord to place any type of antennae or transmission facility on the Property, excluding the Premises, Landlord shall submit a proposal complete with all technical specifications reasonably requested by Tenant to Tenant for review for noninterference; however, Landlord shall not

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

14. Default. It shall be a default if:

a. Tenant defaults in the payment of Rent or any other sums payable to Landlord when due, and does not cure such default within thirty (30) calendar days after written notice of default is received by Tenant;

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

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

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

e. Tenant becomes insolvent;

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

g. Tenant fails at any time to maintain insurance as required in Section 22 of this Lease and the attached **Exhibit E** and such failure is not cured within fifteen (15) days following Tenant's receipt of written notice of such failure.

15. Possession. If Landlord terminates this Lease in the event of any uncured default of this Lease by Tenant, the Landlord shall have the right to take exclusive possession of the Shelter.

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

17. Optional Termination. Except for instances of default as set forth in Section 14, this Lease may be terminated (a) by Tenant if it is unable to obtain or maintain any license, permit, or other Governmental Approval necessary for the construction and/or operation of Tenant's business under this Lease or Tenant, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary; or (b) if Tenant or Tenant's vendor of the PSERN System determines that, for technical, design, interference, environmental, economic or title reasons, the Premises are not necessary or suitable for the operation of the PSERN System or the use described in this Lease; (c) by Landlord upon eighteen (18) months' prior written notice to Tenant, if Landlord decides, in its sole discretion for any reason, to discontinue use of the Premises for municipal or public purposes; (d) by Landlord or Tenant if there is a determination made pursuant to an official un-appealable order of the FCC that continued use of the Premises by Tenant is in fact a threat to public health, safety or welfare that cannot be remediated; (e) by Landlord if Tenant's use of the Premises violates applicable laws or ordinances; or (f) by Landlord if Tenant loses its license to provide service for any reason, including, but not limited to, non-renewal, expiration, or cancellation of its license.

18. Termination; Notice. Except as otherwise provided above in Section 17(c), any notice of termination pursuant to Section 17 shall be given to the other party in writing at least thirty (30) calendar days prior to the termination date in accordance with the provision of Section 27.

19. Damage or Destruction. If Tenant's Improvements or any portion thereof are destroyed or damaged so as to materially hinder effective use of the Premises

through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) calendar days' written notice to Landlord. In such event, Tenant shall promptly remove all Improvements from the Premises as set forth in Section 5(b) above. This Lease (and Tenant's obligation to pay Rent) shall terminate upon Tenant's fulfillment of the obligations set forth in the preceding sentence, at which termination Tenant shall be entitled to the prorated reimbursement of any Rent prepaid by Tenant. If the Tenant believes it is feasible to relocate the Improvements to a different location on the Property, the parties agree that the Premises will be relocated. Landlord will provide an interim site for Tenant to locate temporary, mobile communications facilities and equipment as necessary to continue service during repair or relocation of the Premises or Improvements. A survey will be prepared for the relocated Premises (including access and utility easements) and the survey will replace **Exhibit B** attached hereto.

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

21. Indemnity.

a. Disclaimer of Liability: Except for the negligence or willful misconduct of Landlord, Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Property, the Premises, the Access Easement, and any Improvements made by Tenant.

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

granted by this Lease, except to the extent of the Landlord's negligence and willful misconduct.

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

c. Assumption of Risk: Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about the Property, the Premises and the Access Easement. Tenant's assumption of risk shall not apply: (i) to any latent defects or other dangerous situations, if Landlord knows or should know that defect or situation exists but has not disclosed that information to Tenant, or (2) to any dangerous conditions arising from Landlord's negligence or willful misconduct.

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

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

24. Holding Over. Any holding over after the expiration of the Term of this Lease, with the consent of the Landlord, shall be construed to be a tenancy from month to month and rent shall be paid by Tenant at one hundred twenty-five percent (125%) of the

monthly proration of the annual Rent in effect upon the expiration of the Lease, but shall otherwise be on the same terms and conditions herein specified, so far as applicable.

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

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

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

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

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

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

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

With a copy to:                     King County Department of Information Technology

Puget Sound Emergency Radio Network  
Attn: Marlin Blizinsky  
Re: Kent Repeater PSERN Lease  
401 Fifth Avenue, Suite 600  
Seattle, WA 98104

28. Assignment and Subletting. Tenant shall not sublet all or any part of the Premises. Tenant shall not assign its interest in this Lease without Landlord's prior written consent, which will not be unreasonably withheld. Consent by Landlord to any assignment shall not constitute a waiver of the necessity of such consent to any subsequent assignment. This prohibition against any assignment or subletting shall be construed to include a prohibition against any subletting or assignment by operation of law. Landlord acknowledges that Tenant and other municipalities participating in the PSERN System intend to establish a new governmental non-profit entity that will eventually own and operate the PSERN System. Notwithstanding anything in this Lease to the contrary, Tenant may assign its interest in this Lease, without the Landlord's consent, to that governmental non-profit entity or to any entity existing now or in the future that will be responsible for the operation, maintenance, management, updating and upgrade or replacement of the PSERN System as authorized by law; provided that Tenant shall provide notice to Landlord within forty-five (45) calendar days after the execution date of such assignment. In the event of an assignment, the assignee shall assume all liability of the assignor and Tenant will be relieved of all future performance, liabilities and obligations under this Lease to the extent of such assignment.

29. Other Leases. Nothing in this Lease shall preclude Landlord from leasing other space for communications equipment to any person or entity that may be in competition with Tenant, or to any third-party, subject to the provisions of Section 13(c) above.

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

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

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

33. Miscellaneous.

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

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

c. This Lease shall be construed in accordance with the laws of the State of Washington. Venue and jurisdiction of any lawsuit arising out of the performance or obligations of this Lease shall be in the King County Superior Court. In the event of claim or litigation to enforce any terms of this Lease, each party shall be responsible for its own legal costs and attorney fees except as noted in Sections 21 and 23.

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

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

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

34. Non-Discrimination. Landlord and Tenant, for themselves, their successors, and assigns as a part of the consideration hereof, do hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state or local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Landlord and Tenant shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Tenant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Lease and may result in ineligibility for further agreements between the parties.

35. Effective Date. This Lease is executed and shall become effective on the last date both parties execute this Lease, as indicated below (the "Effective Date"). If the Effective Date occurs after the Rent Commencement Date, any act consistent with the authority and obligations described herein that takes place after the Rent

Commencement Date, but prior to the Effective Date, is hereby ratified and affirmed by the parties to this Lease.

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

**LANDLORD:  
CITY OF KENT**

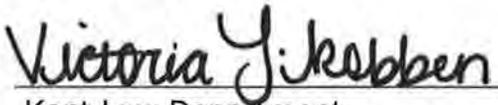
**TENANT:  
KING COUNTY**

By:   
Print Name: Suzette Cooke  
Its: Mayor  
Date: 4/28/17

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

  
Kent Law Department

\_\_\_\_\_  
Busch Law Firm PLLC



STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF KING            )

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

Dated: \_\_\_\_\_

*-Notary Seal Must Appear Within This Box-*

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

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

**EXHIBIT A**

## LEGAL DESCRIPTION OF LANDLORD'S PROPERTY

The west 150 feet of the south 300 feet of the north 330 feet of the southeast quarter of the southwest quarter of the southeast quarter of Section 33, Township 22 North, Range 5 East, W.M., ALSO,

The portion of the southwest quarter of the southwest quarter of the said southeast quarter of Section 33 lying easterly of the westerly 508 feet thereof, and northerly of the southerly 429 feet of the said southwest quarter of the southwest quarter of the southeast quarter and southerly of the northerly 30 feet of the said southwest quarter of the southwest quarter of the southeast quarter; ALSO,

That portion of the south 300 feet of the north 330 feet of the southwest quarter of the southwest quarter of the said southeast quarter of Section 33 lying southerly of the north line of the southerly 429 feet of the said southwest quarter, and easterly of the following described line:

Beginning at a point on the south line of the said southwest quarter of the southwest quarter of the southeast quarter which is 508 feet easterly of the southwest corner thereof;

Thence northerly to a point on the said north line of the southerly 429 feet of the southwest quarter which is 509.70 feet easterly of the west line of the said southwest quarter and the terminus of said line description;

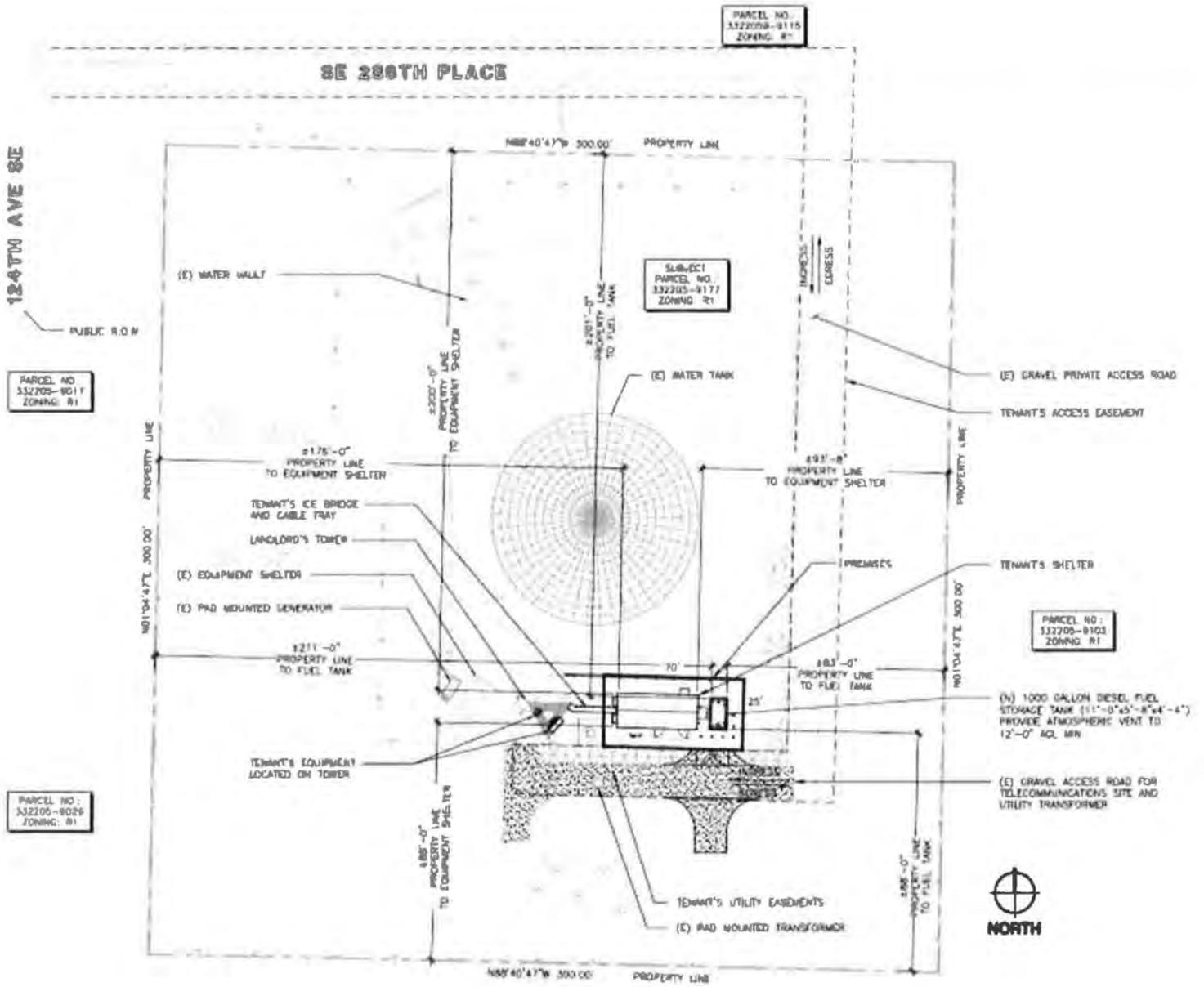
Together with an easement over, under and across the east 30 feet of the west 180 feet of the north 330 feet of the southeast quarter of the southwest quarter of the southeast quarter of Section 33, Township 22 North, Range 5 East, W.M.;

And together with an easement over, under and across the north 30 feet of the west 150 feet of the said southeast quarter of the southwest quarter of the southeast quarter; ALSO that portion of the north 30 feet of the southwest quarter of the said southwest quarter of the southeast quarter lying easterly of 124<sup>th</sup> Avenue Southeast; ALSO that portion of the south 30 feet of the northwest quarter of the said southwest quarter of the southeast quarter lying easterly of 124<sup>th</sup> Avenue Southeast;

Situated in the County of King, State of Washington.

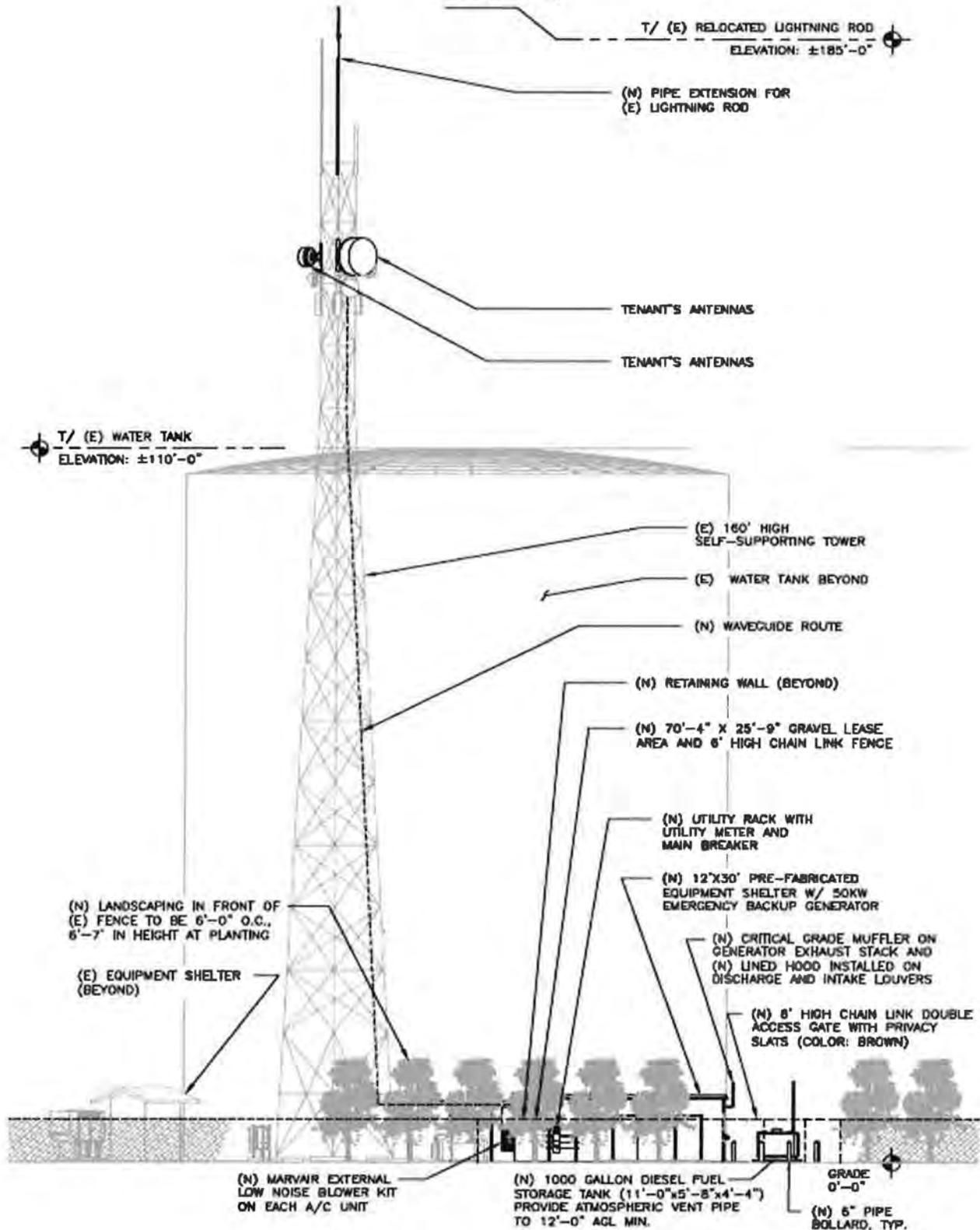
Address: 12523 SE 286<sup>th</sup> Place, Auburn, WA

**EXHIBIT B**  
(Page 1 of 2)  
**DEPICTION OF PREMISES**



**EXHIBIT B**

(Page 2 of 2)



**EXHIBIT C**

## LEGAL DESCRIPTION OF ACCESS EASEMENT

AN ACCESS EASEMENT 20.00' FEET IN WIDTH, 10.00' ON BOTH SIDES OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., THENCE N01°04'27"E A DISTANCE OF 327.49 FEET ALONG THE CENTER OF SECTION LINE; THENCE S88°40'47"E A DISTANCE OF 510.05 FEET TO THE SOUTHWEST CORNER OF THE SERVIENT PARCEL AS DESCRIBED ON THIS SHEET; THENCE N01°04'47"E A DISTANCE OF 70.61 FEET ALONG THE WEST LINE OF SAID SERVIENT PARCEL; THENCE S88°37'37"E A DISTANCE OF 133.45 TO THE POINT OF BEGINNING;

THENCE S88°37'37"E A DISTANCE OF 116.79 FEET; THENCE N01°09'42"E A DISTANCE OF 265.02 FEET; THENCE S89°22'50"W A DISTANCE OF 159.35 FEET; THENCE N88°40'47"W A DISTANCE OF 571.42 TO THE EAST RIGHT-OF-WAY OF 124TH AVE SE, SAID POINT BEING THE TERMINUS OF THIS EASEMENT.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.



**EXHIBIT D**

## SCOPE OF WORK TO BE COMPLETED BY KING COUNTY/PSERN

- 12'x30' prefabricated equipment Shelter with 50KW diesel generator
- Retaining walls and grading around the Tenant's Shelter
- 1,000 gallon above-ground diesel fuel tank
- Ice bridge between the Shelter and the Landlord's existing Tower
- New gravel turnaround
- Landscaping along a portion of the existing south fence line (as may be required by Tenant's Government Approvals)
- New access gate within the existing fence line
- Two (2) new microwave dishes installed at 145' centerline on the Landlord's existing Tower
- All necessary cables, conduit, lines and associated equipment and improvements
- New 6' high chain link fencing to isolate the Premises from the Landlord's water tank facilities located on the Property.

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

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

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

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

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

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

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

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

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

## II. Specific Insurance Requirements

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

### A. Minimum Scope of Insurance:

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

### B. Minimum Amounts of Insurance

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

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

### C. Other Insurance Provisions

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

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

### D. Acceptability of Insurers

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

E. Verification of Coverage.

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