

# **MASTER LICENSE AGREEMENT**

This Master License Agreement, dated as of \_\_\_\_\_, 2010, is made by and between the City of Vancouver, a municipal corporation of the State of Washington ("Licensor"), and LCW Wireless, LLC, a Delaware limited liability company ("Lessee"). Licensor and Licensee may be referred to where appropriate individually as a "Party" or collectively as the "Parties."

## **RECITALS**

Licensor owns or has other legal rights to certain property (land, improvements to that land, and structures on that land). Licensee wishes to obtain a non-exclusive license to use certain portions of Licensor's property for purposes of locating unmanned radio communications and direct support equipment, including, but not limited to, transmitters, receivers, antennae, feed lines, combiners, batteries and chargers, all to the extent used to provide FCC-licensed frequencies (collectively, the "Equipment") on such property. The specific portion of Licensor's property at each individual location licensed to Licensee will be referred to individually as a "Site" and collectively as the "Sites." Any ground space agreed by the Parties to be reasonably necessary for placement and operation of the Equipment shall be included in the Site licensed to Licensee as described in the Site License Acknowledgment, provided that such ground space may be subject to separate rental fees to the extent specified as part of the applicable Site License Acknowledgment.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

## **1. MASTER LICENSE AGREEMENT**

This Agreement contains the basic terms and conditions upon which each Site is licensed by Licensor to Licensee. When the Parties agree on the particular terms for a Site, the Parties will execute a completed Site License Acknowledgment (a "SLA") in the form attached as Exhibit A. Each executed SLA is deemed to be a part of this Agreement. The terms and conditions of the SLA will govern and control if there is a discrepancy or inconsistency between the terms and conditions of any SLA and this Agreement. Licensee may record a memorandum of the SLA. Upon termination of the SLA for any reason, Licensee will record a notice of termination of the SLA if Licensee previously recorded a memorandum of the SLA.

## **2. USE**

Subject to the terms and conditions contained in this Agreement and the SLA relating to the Site, Licensor grants a license to Licensee and Licensee accepts a license from Licensor for the Site(s).

**2.1** A Site may be used by Licensee only for the installation, operation, upgrading, repair, maintenance and removal of the unmanned radio communications Equipment and related

Licensee-owned buildings, antennae support structures ("Towers") and utilities, all as more specifically described in the applicable SLA ("Communications Facility"); provided that in no event shall such Equipment be used for the provision of energy or water management services without the written consent of Licensor; provided, however, that such provision shall be deemed inapplicable to the extent prohibited by state or federal law. Such installation, repair, operation, upgrading, maintenance and removal by Licensee at the Site shall be lawful and in compliance with all applicable laws, orders, ordinances and regulations of federal, state, and local authorities having jurisdiction.

**2.2** Licensee shall, at its sole cost and expense (including the cost of any necessary testing of and/or modifications to Licensor's equipment), install, maintain, remove, upgrade and operate at the Site only the Licensee Communications Facilities specified on the applicable SLA. Licensee must install, operate and maintain the Equipment in a manner that does not interfere in any way with the existing or future operations of Licensor at the Site or any other prior existing users of the Site, and in accordance with all applicable requirements set forth in Section 9 hereof. Licensee shall not use or permit any use of a Site that will in any way:

- (a) Conflict with any applicable law, statute, regulation, ordinance, rule, order or other requirement, now or hereafter in effect, of any governmental authority;
- (b) Cause or constitute any nuisance, noxious odors, unsafe condition or waste in or about the Site;
- (c) Interfere with the rights, operations, or disturb the quiet enjoyment of Licensor, other users of the Site, any other person lawfully on the Site, or any other customer of Licensor; or
- (d) Except as allowed in Section 15.3, cause a cancellation, increase the premiums for or deductible under, or otherwise affect any fire, casualty, property, liability or other insurance covering the Site.

**2.3** The types of Sites potentially available to Licensee by Licensor include water towers and raw land. Licensor has the right to define the level of reasonable coordination required for the installation, maintenance, and repairs of Licensee's Communications Facilities at water towers and raw land. Such levels of coordination shall be defined within each SLA. Licensor will respond to Licensee's request regarding coordination of the installation of Licensee's Communications Facilities within twenty (20) days after receiving Licensee's request.

**2.4** Licensee acknowledges that the license to use the Site is secondary to Licensor's operations, maintenance, and related activities, which are the primary uses of the Site. Accordingly, if there is a casualty to any of Licensor's equipment on or adjacent to a Site and it is necessary to use the Site for restoration or other activities necessary to ensure such continued Licensor operations, maintenance and related activities, Licensee will arrange to utilize temporary facilities on or off the Site and shall cooperate, and shall otherwise comply with reasonable requests made by Licensor to the extent necessary to restore or maintain services to Licensor's customers, in the sole discretion of Licensor. Licensor shall provide 30 days notice in advance of any scheduled construction or maintenance activities that will require the Licensee to remove and/or relocate the Licensee's equipment. In cases of emergencies, Licensor will make a

good faith effort to give 24 hours notice to Licensee for removal or relocation of Licensee's equipment, but reserves the right to move or relocate said equipment if it interferes with the Licensors emergency requirements. In all cases, it remains the responsibility of the Licensee for the removal and or relocation of Licensee's equipment.

**2.5** Nothing in this Agreement shall prohibit Licensors from entering into agreements with third parties for the use of the Site for communication and other purposes; provided that any radio communication equipment proposed to be installed on the Site shall be subject to requirements substantially equivalent to those set forth in Section 9.4 hereof.

**2.6** Licensee shall, at Licensee's expense, prepare such appropriate documents and applications as may be required by any governmental agency with jurisdiction in order for Licensee to obtain the necessary licenses, permits or other approvals from such governmental agency to use the Site as contemplated by this Agreement and the applicable SLA.

**2.7** Licensors shall execute such appropriate documents and applications as may be required by virtue of Licensors ownership of or rights in the Site, after such documents and applications have been prepared by Licensee for submittal to any governmental agency with jurisdiction in order for Licensee to obtain the necessary licenses, permits or other approvals from such governmental agency to use the Site as contemplated by this Agreement and the applicable SLA; provided, however, that Licensors shall not under any circumstances be obligated to execute any application or other document that, in Licensors reasonable judgment, will in any way impair, limit or adversely affect Licensors rights in or ownership or use of the Site or which creates an unjustifiable liability to Licensors.

**2.8** Licensee shall permit co-location of other equipment or facilities provided that any such third party equipment or facilities shall be subject to requirements substantially equivalent to those set forth in Section 9.4 hereof, is in compliance with the co-location requirements of VMC 20.890.040.R, and is otherwise structurally feasible. All license or other fees resulting from such co-location shall be payable to Licensors unless otherwise specifically agreed in the applicable SLA.

### **3. TERM**

The initial term of this Agreement ("Initial Term") is five (5) years commencing on the date specified on page 1 of this Agreement ("Effective Date"). The Initial Term for a SLA will commence on the "Commencement Date" of such SLA, and will terminate concurrent with this Agreement, unless otherwise terminated as provided in this Agreement. Commencement Date of a SLA shall be 120 days after full execution of the SLA; or upon commencement of construction, whichever occurs first. Licensee may enter the Site stated in the SLA before the Commencement Date, to the extent such entry is related to engineering surveys, inspections, or other reasonably necessary tests required prior to construction and installation of Licensee's Communications Facility subject to the conditions addressed in Section 12 "Access to the Site." The term of this Agreement will be automatically renewed for one (1) additional term ("Renewal

Term") of five (5) years, unless Licensee provides Licensor notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

#### **4. TERMINATION**

**4.1** In addition to any other rights to terminate a SLA or this Agreement, Licensor has the right to immediately terminate a SLA and all of Licensee's rights to the Site upon written notice to Licensee if any Equipment placed on the Site by Licensee unreasonably interferes with any equipment located on the Site, the use and quiet enjoyment of neighboring property of any customer of Licensor, or other users of the Site, and Licensee fails to resolve the interference to the satisfaction of Licensor within thirty (30) days of the date of such notice.

**4.2** In addition to any other event of termination of a SLA or this Agreement, Licensee shall have the right to terminate a SLA upon thirty (30) days prior written notice upon the occurrence of any of the following:

- (a) Any certificate, permit, license or approval specified in the SLA is rejected, provided that Licensee has used its best efforts to obtain such certificate, permit, license or approval; or
- (b) Any certificate, permit, license or approval specified in the SLA cannot be obtained in a timely fashion, provided that Licensee has used its best efforts to timely obtain such certificate, permit, license or approval; or
- (c) If any previously issued certificate, permit, license or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency, provided that Licensee has used its best efforts to keep such certificate, permit, license or approval in force.
- (d) If Licensee determines that the Site is not appropriate for its operations for the following reasons:
  - (i) environmental concerns including without limitation conditions which violate applicable law or otherwise prevent Licensee from constructing, maintaining or operating the Licensee Facilities; or
  - (ii) technological reasons, including without limitation, signal strength, coverage or interference.

**4.3** In addition to any other rights to terminate a SLA or this Agreement, Licensor shall have the right to immediately terminate this Agreement in the event that, because of the existence of this Agreement (individually or in conjunction with other such agreements), any court, regulatory, or governmental entity having jurisdiction issues any final order that Licensor is a "Telecommunications Company" or that Licensor is providing "Telecommunications Service," as defined in any federal or Washington State statute or regulation. Upon receipt of such notice Licensee shall have a reasonable period of time, not to exceed 90 days, within which to secure alternate facilities and to disconnect and remove all of its property from Licensor's facilities, and this Agreement as well as Licensee's use of Licensor's facilities shall terminate upon the expiration of such period. If such final order specifies an earlier date of termination, then this Agreement shall terminate on the date so specified, unless Licensee is diligently prosecuting in

good faith an appeal or other legal challenge to the final order and pending, such appeal or challenge, the effectiveness of such final order is stayed or its applicability to Licensor is otherwise suspended.

**4.4** In addition to any other rights to terminate a SLA or this Agreement, Licensor shall have the right to terminate this Agreement upon notice in advance to Licensee, if the existence of this Agreement (individually or in conjunction with other such agreements) creates an adverse impact upon Licensor's ability to issue tax exempt debt. In such event Licensor shall, before the effective date of any termination, and if Licensee so elects, negotiate in good faith with Licensee to amend this Agreement to eliminate the adverse impact.

Should Licensor become aware of any pending legislation or regulatory change which is likely to have an adverse impact upon Licensor's ability to issue tax-exempt debt as a result of this Agreement (individually or in conjunction with other such agreements), Licensor shall promptly notify Licensee thereof. Licensee, at its sole cost and expense, may contest such legislation or regulatory action, including rights of legal challenge and appeal to effect elimination of such adverse impact and Licensor shall support such activities of Licensee provided that such support shall not result in any cost or expense to Licensor.

Notwithstanding the foregoing, Licensor retains the right to terminate this Agreement at any time if, in its sole judgment, this Agreement individually or in conjunction with other such agreements creates an adverse impact on its ability to issue tax-exempt debt; however, Licensor agrees that it will not terminate this Agreement until the latest reasonable date as determined by Licensor, so as to afford Licensee as much time as reasonably possible to make arrangements for relocation of its facilities.

**4.5** In addition to any other event of termination of a SLA or this Agreement, Licensor shall have the right to terminate, for any reason, a SLA and all of Licensee's rights to the Site upon three (3) months prior written notice.

**4.6** If the Licensee terminates this Agreement, any prepaid Annual Fees (as described in Section 5 below) shall be retained by Licensor; provided that if such termination is pursuant to Sections 4.7, 8.6, 9.9, 18.2, 21.1, 21.3, 21.4, 23.3, 26.2(b), 26.2(c) and 26.2(d) hereof, such Annual Fees will be prorated to the date of such termination and the unused portion returned to the Licensee. If Licensor terminates this Agreement, any prepaid Annual Fees will be refunded to Licensee on a pro rata basis; except that no refund will be issued if termination is based upon Default of Licensee as set forth in Sections 23.1 and 23.2.

## **5. FEES**

### **5.1 ANNUAL FEE**

The "Annual Fee" shall mean the sum of the annual fees for all Sites as calculated in accordance with the applicable SLAs and the following:

- (a) The Annual Fee will be payable on or before the Commencement Date and thereafter on the first day of the first month following each anniversary of the Effective Date of this Agreement; and
- (b) The Annual Fees for each Site will be prorated in the first and last year of the SLA to coincide with the anniversary of the Effective Date of this Agreement, except that Annual Fees for each Site will continue past any termination of the SLA (and shall be prorated) until all of the Equipment is removed from the Site and restoration of the Site has occurred according to the Agreement; and
- (c) The prorated first year Annual Fee for each Site will be calculated based on the Commencement Date.

## **5.2 APPLICATION FEE**

With respect to any Site which Licensee is or may be interested in licensing pursuant to this Agreement, Licensors shall provide, at the request of and at no charge to Licensee, general information pertaining to such Site such as its availability, ownership status and/or applicable easement rights, availability of utilities, and Licensors' future plans for usage of the Site to the extent available, and subject to change without notice. Any further request for preliminary information and/or submittal of a proposed SLA regarding such Site shall be accompanied by a nonrefundable application fee in the amount set forth in Exhibit B, which shall cover the average Licensors' costs of processing such request for additional information and/or proposed SLA; provided that only one Application Fee shall be charged per proposed Site.

## **5.3 ADJUSTMENT**

The Annual Fee and Application Fee for a Site will be adjusted as provided on Exhibit B.

## **5.4 ESCORT AND BUILDING FEES**

Licensee shall reimburse Licensors for any and all reasonable costs and expenses reasonably incurred by Licensors in connection with providing escorts at Site(s) and in connection with services performed by Licensors at the request of Licensee within thirty (30) days after submittal of a statement of such reasonable costs and expenses and reasonable supporting documentation. Without limiting the generality of the foregoing, amounts recoverable by Licensors hereunder shall consist of reasonable and satisfactorily documented applicable engineering, construction, supervision, and administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service and other expenses.

## **5.5 INTEREST**

If Licensee fails to pay any Fee within thirty (30) business days of when due, such amount will bear interest until paid at the rate of one and one-half percent (1.5%) per month or at the highest rate permitted by law, whichever is lower.

## **5.6 LATE FEE**

If Licensee fails to pay any Fee within thirty (30) business days of when due, Licensor may require that Licensee pay to Licensor a late fee of \$150. The late fee is in addition to the interest Licensor may assess under Section 5.5 of this Agreement.

## **5.7 OTHER AMOUNTS**

Any sums due to Licensor under this Agreement which are not specifically defined as "Annual Fees" are deemed additional fees and are subject to the interest charges and late fees specified in Sections 5.5 and 5.6 and any other provisions of this Agreement which address License Fees.

## **5.8 WHOLESALE PURCHASE OF AIR TIME**

To the extent agreed between the Parties with respect to a particular Site or Sites, in lieu of part or all of the fees payable as set forth above, Licensee may in its discretion offer air time to Licensor on a commercially available basis at Licensee's wholesale rates or lesser rates for off-peak or other special service as negotiated between the Parties, subject to all applicable federal, state or local laws, regulations and tariffs.

## **6. SITE LICENSE APPROVAL**

**6.1** Licensee has the right at its sole cost and expense to erect, maintain, replace and operate at each Site only that Communications Facility specified on a SLA. Prior to commencing any installation or material alteration of a Site, Licensee must obtain Licensor's written approval (or disapproval as the case may be) of a completed SLA, in the form attached as Exhibit A, for the Site; provided that such approval or disapproval shall be granted only after consideration by City Council. Licensee shall specify its proposed installation of utilities to the Site in the applicable SLA and shall provide Licensor with prior written notice of such installation; provided that if the proposed route interferes with Licensor's current or potential future use of the Site, the Licensor may direct the installation to take a specific route and be conducted in a specific manner. Unless otherwise directed in writing by Licensor, Licensee shall submit each proposed SLA to:

For Equipment located on Water Department sites:

Name:	Operations Superintendent Richard Hoffman
Address:	City of Vancouver Public Works Department Operations Center 4711 E. Fourth Plain Blvd. P.O. Box 1995 Vancouver, WA 98668-1995

**6.2** In the event that Licensor gives its written consent to a proposed SLA, Licensee shall install the Equipment in strict accordance with:

- (a) The proposed SLA thereof;
- (b) Any conditions or qualifications specified by Licensor in its consent; and
- (c) The provisions of this Agreement, to the extent this Agreement is not inconsistent with the SLA.

**6.3** Licensee shall reimburse Licensor for any and all reasonable costs and expenses reasonably incurred by Licensor in connection with services performed by Licensor at the request of Licensee (whether prior to or after the submittal of a proposed SLA) within thirty (30) days after submittal of a statement of such reasonable costs and expenses and reasonable supporting documentation. Without limiting the generality of the foregoing, amounts recoverable by Licensor hereunder shall consist of reasonable and satisfactorily documented applicable engineering, supervision, and administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service and other reasonable and satisfactorily documented expenses.

**6.4** Any structural work on a structure on the Site, or any work involving a material alteration of any portion of the Site, must be approved by a licensed structural engineer at Licensee's sole cost and expense. For purposes of the foregoing, Licensee's subsequent changing out of Equipment previously installed at a Site with Equipment of substantially the same size in the course of repairs or upgrading of electronic equipment will not be deemed to be a material alteration; provided, however, that any increase in the number of antennae at a Site or change in the height or placement of such antennae shall be deemed a material alteration.

**6.5** In the event Licensee shall install or materially alter any Equipment, Communications Facility or portion thereof on Licensor's property or facilities without obtaining Licensor's written approval of a SLA relating to such installation or material alteration, Licensee shall pay, in addition to the fees payable pursuant to Section 6.3 and 6.4 above, a retroactive monthly charge for each month of such unauthorized installation in the amount set forth in Exhibit B hereto. In addition, Licensee shall immediately submit to Licensor a SLA for such installation or alteration and, to the extent a mutually acceptable SLA cannot be negotiated within a reasonable period of time, shall promptly remove such facilities (or, with respect to materially altered facilities, shall return such altered facilities to the state specified in the original SLA) upon written notice from the Licensor, in accordance with the requirements set forth in Section 22 hereof. In the event Licensee cannot provide documentation satisfactory to Licensor, in Licensor's sole discretion, as to the actual date of such unauthorized installation or alteration, Licensee shall be liable for accrued charges for such installation or alteration for a period of two (2) years preceding the date of discovery by Licensor of such unauthorized installation or alteration.

## **7. SITE ACCEPTANCE**

**7.1** For purposes of Section 7.2 below, Licensee will be deemed to have accepted the Site only at the time Licensee commences installation of the Equipment at the Site pursuant to the SLA approved by Licensor; provided that Licensee's failure to so accept such Site shall not be



grounds for termination of the SLA relating to such Site except as provided in Section 4 hereof. Conducting feasibility and cost assessments and other inspections on the Site is not deemed to be acceptance.

**7.2 Acceptance of the Site by Licensee is conclusive evidence that Licensee:**

- (a) Accepts the Site as suitable for the purpose for which it is licensed;
- (b) Accepts the Site and any structure on the Site and every part and appurtenance thereof AS IS, with all faults; and
- (c) Waives all claims against Licensor in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes, except:
  - (i) As expressly provided otherwise in this Agreement;
  - (ii) To the extent the claim results from the negligent act of Licensor, its employees, agents or contractors; or
  - (iii) If resulting from a known claim by a third party not identified by Licensor in its representations under this Agreement.

**7.3** Licensor does not warrant the suitability of any particular Site for the purposes for which Licensee may desire to use it; nor does Licensor warrant the adequacy of any Site's location, its condition, or the condition of any structure or appurtenances for any purpose. Licensee takes each Site "AS IS," "WHERE IS" and "WITH ALL FAULTS."

**8. PERFORMANCE OF THE WORK**

**8.1** The installation, maintenance, repair, relocation and removal of Equipment and other work performed in connection with this Agreement is collectively referred to herein as the "Work."

**8.2** Except as otherwise agreed upon by the Parties in writing, Licensee shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. All Work will be undertaken at Licensee's sole cost and expense. Licensee shall expeditiously and efficiently perform the Work in accordance with the SLA and the provisions of this Agreement. Licensee shall not independently hire any Licensor employee to perform any of the Work (e.g., other than in the course of his or her employment with Licensor with respect to Work that Licensor agrees to perform for Licensee).

**8.3** Licensee shall perform the Work in a workmanlike and skillful manner and (a) the Equipment will be safe when used in conformance with manufacturers' and installers' guidelines; (b) of first-class quality for Licensee's intended purpose; and (c) in conformance with such license requirements and specifications as Licensor shall from time to time reasonably prescribe after thirty (30) days' written notice; and (d) in compliance with all applicable laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals with jurisdiction thereof pertaining to the construction, operation and maintenance, including without limitation,

the requirements of the latest edition of the National Electrical Safety Code and Licensor's specifications.

**8.4** Licensee shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement. If Licensee fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, Licensor may, after ten (10) days' notice to Licensee (or sooner, upon Licensor's determination of an emergency), perform such Work and make such corrections and replacements in coordination with Licensee at Licensee's sole risk and expense and Licensee shall reimburse Licensor for the entire expense thereby incurred.

**8.5** Installation of the Equipment must not adversely affect the structural integrity or maintenance of the Site or any structure or improvement on the Site and the resulting Equipment on the Site shall be reasonably inconspicuous as determined by the requirements of the individual SLA.

**8.6** Installation of the Equipment or the Work is subject to preemption by Licensor due to Licensor's work to restore its operations on the Site; however, such preemption shall occur only in an emergency situation, as reasonably determined by Licensor, and with reasonable notice to Licensee (within twenty-four (24) hours) of such emergency. Upon the occurrence of a preemption, the Annual Fee shall be abated on a prorated basis for the duration of the preemption, or Licensee may terminate the SLA upon thirty (30) days' notice to Licensor and subject to Section 4.6.

**8.7** Licensee shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same.

**8.8** Licensee hereby acknowledges that Licensor employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between Licensor and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Agreement, Licensee will cooperate with Licensor as is reasonable.

**8.9** Licensee shall, at all times, keep the Site reasonably cleared of all rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, Licensee shall promptly remove all rubbish, refuse, debris and surplus materials.

**8.10** The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to reasonable visual inspection by Licensor. No inspection, delay or failure to inspect, or failure to discover any defect or non-compliance by Licensor shall relieve Licensee of any of its obligations under this Agreement.

**8.11** Licensee shall give immediate attention to, and shall use reasonable efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating Licensor in any way), all complaints received by Licensee from third parties arising out of or in connection with

performance of the Work. Licensee shall promptly notify Licensor of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, Licensee shall use its best efforts to maintain and promote good public relations for Licensor.

## **9. MINIMUM STANDARDS FOR COMMUNICATIONS SITES**

**9.1** Licensor retains the right to visually inspect Licensee's equipment at any reasonable time to ensure compliance with Site standards presently in effect or as may be amended. This clause shall not be construed as a duty to inspect.

**9.2** Each transmitter at the Site will be identified with a copy of the Federal Communications Commission (FCC) compliance documentation, SLA document number, name of person or service agency responsible for repairs, their telephone number, equipment receive frequency, and equipment transmit/receive tone frequencies.

**9.3** All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products. In addition, transmitters in the 1950 to 1965 Mhz range shall have at least 30 dB of isolation followed by either a low pass filter and a bandpass cavity with at least 45 dB of attenuation 1.0 Mhz removed from the operating frequency or simply the bandpass cavity without the filter, provided testing reveals that the low pass filter is not needed.

**9.4** Each party shall install and maintain equipment in compliance with the latest revision and all subsequent revisions of the Western Washington Cooperative Interference Committee (WWCIC) Engineering Standard No. 6, the current version of which is attached as Exhibit C of this Agreement and incorporated herein by reference, and in compliance with all applicable FCC regulations.

**9.5** Subject to Section 9.4 hereof, Licensee agrees to accept any and all interference from Licensor owned or operated systems installed as of the Commencement Date.

**9.6** Licensee shall use its best efforts to resolve, as promptly as possible, technical interference problems caused by Licensee's Equipment with respect to (i) any Licensor owned or operated equipment, installed on the Commencement Date; and (ii) any third-party equipment legally installed as of the Commencement Date or, with respect to additional Licensee Equipment added to a Site following the Commencement Date with respect to such Site, any Licensor or third-party equipment legally installed as of the date such additional Equipment was installed. If such interference is destructive (as defined by the FCC), such interference must be resolved as soon as possible and if such interference cannot be resolved within twenty-four (24) hours, Licensee shall discontinue its signal until the interference is corrected, even if operating in compliance with FCC regulations. Nondestructive, intermittent interference must be corrected within thirty (30) calendar days or Licensee's signal shall be disconnected until the interference is resolved.

**9.7** Prior to the Commencement Date an intermodulation study shall be performed by the Licensee, and a copy provided to the Licensor, for each transmitter on a specific frequency added by the Licensee to a Site containing other transmitters or in the proximity of other transmitters to the extent that the Licensor determines in its reasonable judgment that potential interference may occur. New transmitters shall be designed to avoid the potential for intermodulation interference.

**9.8** Where Licensee proposes to use systems utilizing spread spectrum emissions at a particular Site, Licensee shall provide Licensor with a site noise floor measurement for the spectrum from 800 Mhz to 2400 Mhz prior to installation of Licensee's Equipment at the Site, and shall provide Licensor with an additional such measurement within thirty (30) days after such Equipment becomes operational.

**9.9** In the event that radio interference resulting from users other than Licensee (including but not limited to Licensor) is not corrected within thirty (30) days, Licensee may terminate the affected SLA.

## **10. LIENS**

**10.1** Licensee must keep the Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of the Licensee. Licensee retains the right to use any Licensee-owned Communications Facility as collateral in financial transactions to the extent that Licensor's rights and interests are not affected.

**10.2** If any lien is filed against the Site as a result of the acts or omissions of Licensee or Licensee's employees, agents, or contractors, Licensee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Licensor within thirty (30) days after Licensee receives written notice from any party that the lien has been filed.

**10.3** If Licensee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Licensor, Licensor may discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding, and/or terminate Licensee's rights to the Site(s).

**10.4** Licensee must pay on demand any amount paid by Licensor for the discharge or satisfaction of any lien resulting from any act or omission of Licensee, and all reasonable attorney's fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all reasonable disbursements in connection therewith.

## **11. UTILITIES FOR THE SITE**

Licensee shall have the right, at its sole cost and expense, to obtain electrical and telephone service from any utility company that provides such service to the Site, and shall timely pay for all of its utility charges and costs. Licensee may arrange for the installation of a separate meter

and main breaker. The exact location of proposed utility routes and the manner of installation will be part of the SLA described in Section 6.1 of this Agreement.

## **12. ACCESS TO THE SITE**

The following provision grants to Licensee access rights to the Site subject to the following limitations (or unless otherwise modified on the applicable SLA):

- (a) Access for construction, routine maintenance and repair and other nonemergency visits shall only be during business hours (defined as Monday through Friday, 7:00 a.m. to 4:30 p.m.) with at least twenty-four (24) hours advance notice on a prior business day given to Licensor to arrange for an escort.** Licensee shall not have to pay an escort fee as described in Section 5.4 of this Agreement, provided Licensee met the advance notification requirement above, access is during business hours, and Licensee complies with Licensor access conditions pursuant to Section 12.d below.
- (b)** In the event of emergency defined as a natural disaster or other event which could have a material adverse effect on the service provided to Licensee's customers, Licensee may access the Site twenty-four (24) hours per day, seven (7) days per week, escorted by Licensor as arranged using the emergency phone number and related procedure described in Section 20 of this Agreement. Licensor may charge an escort fee as described in Section 5.4 in these situations.
- (c)** Access to the Site may be by foot or motor vehicle, including trucks;
- (d)** At its sole discretion, Licensor may allow Licensee access to the site without an escort present, provided Licensee has given proper advance notice pursuant to Section 12.a above; Licensee has identified the person or persons who will be on the Site; the person or persons have undergone and passed a background check acceptable to Licensor; and Licensee maintains a complete and current access log as specified by Licensor at the Site available for inspection by Licensor at any time. Access to the Site shall also be subject to such additional reasonable conditions as may be imposed by Licensor from time to time which shall be after twenty (20) days' written notice to Licensee;
- (e)** Access to the Site is secondary to Licensor emergency operations and maintenance at the Site.
- (f) At no time shall Licensee or its agents (including Licensee's subcontractors) enter the site without prior authorization from the Licensor's emergency contact. Any such unauthorized entry may be reported to the appropriate authorities for potential criminal charges.**

Licensee acknowledges that the foregoing access rights may be subject to any limitations or restrictions on access imposed upon Licensor (and therefore upon Licensee) by the property owner under any underlying access easement relating to a particular Site. Licensee agrees to abide by such limitations or restrictions provided that Licensee has been given a copy of such license or license documents or has been notified by Licensor of such limitations and restrictions.

## **13. PAYMENT OF FEES AND TAXES**

Licensee shall pay and have the right to appeal or contest at its expense (except as otherwise required by law) all personal property fees and taxes, and any required contributions to a universal service fund, applicable to or incurred in connection with the Work, the Equipment or the Licensee's Communications Facility of which the Equipment constitutes a part.

#### **14. BONDS**

Pursuant to the requirements of VMC 20.980.040.N, which is incorporated herein by this reference, Licensee shall obtain and keep in force a performance bond in favor of the City of Vancouver, and a maintenance bond in favor of the City of Vancouver.

#### **15. INSURANCE**

##### **15.1 REQUIRED INSURANCE OF LICENSEE**

Licensee must, during the term of this Agreement and at its sole expense, obtain and keep in force, not less than the following insurance:

- (a) Property insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon each Communications Facility in an amount not less than ninety percent (90%) of the full replacement cost of the Communications Facility.
- (b) Commercial General Liability insuring operations hazard, independent contractor hazard, contractual liability, and products and completed operations liability, in limits not less than \$5,000,000 combined (primary and excess) single limit for each occurrence for bodily injury, personal injury and property damage liability, naming Licensor City of Vancouver and its officers, officials, agents, and employees, as additional insureds. The Commercial General Liability policy must be endorsed to include "*Washington Stop Gap*" insurance. The limits must apply to the Stop Gap coverage, as well. This must be indicated on the certificate.
- (c) Automobile Liability coverage insuring all owned, hired, and leased vehicles and rolling stock through a standard business automobile policy, and employer's auto non-ownership liability, in limits not less than \$1 million per accident
- (d) Worker's Compensation and Employer's Liability insurance.

All insurance policies required of Licensee must be taken out with reputable national insurers rated at least A in the Best Key Rating Guide that are licensed to do business in the jurisdiction where the Sites are located. Licensee must disclose any self-insured retention, which will be permitted only if pre-approved by Licensor. Licensee agrees that certificates of insurance will be delivered to Licensor as soon as practicable after the placing of the required insurance, but not later than the Commencement Date of a particular SLA. All policies must contain an undertaking by the insurers to notify Licensor in writing not less than thirty (30) days before any material change, reduction in coverage, cancellation, or termination of the insurance.

Licensor and Licensee will each year review the limits for the insurance policies required by this Agreement. Policy limits will be adjusted from time to time to proper and reasonable limits, in

accordance with then-current industry standards, but policy limits will not be reduced below those stated above.

## **15.2 NO LIMITATION ON LIABILITY**

The provision of insurance required in this Agreement shall not be construed to limit or otherwise affect the liability of any Party to the other Party.

## **15.3 COMPLIANCE**

Licensee will not do or permit to be done in or about the Site, nor bring or keep or permit to be brought to or kept at the Site, anything that:

- (a) Licensee is made aware of that is prohibited by any insurance policy carried by Licensor covering the Site or any improvements thereon; or
- (b) Will increase the existing premiums for any such policy beyond that contemplated for the addition of the Communications Facility.

Licensor acknowledges and agrees that the installation of the Communications Facility upon the Site in accordance with the terms and conditions of this Agreement will be considered within the underwriting requirements of any of Licensor's insurers and such premiums contemplate the addition of the Communications Facility.

## **16. RELEASE, LIMITATION OF LIABILITY AND INDEMNIFICATION**

**16.1** Licensee agrees to indemnify, defend, and save harmless Licensor, its officers, and employees from and against any and all claims, losses, damages and expenses, including attorneys' fees, arising out of or in connection with the performance of this Agreement, to the extent that such claim, loss, damage, or expense is attributable to (i) any negligent act or omission or willful misconduct of Licensee or anyone directly or indirectly employed by Licensee, including subcontractors of Licensee; (ii) any claim of injury or damage resulting from high voltage induction or electromagnetic fields attributed to Licensee's communication facility; or (iii) environmental hazards or pollutants transported to, stored on or disposed of on any Site by Licensee.

**16.2** Licensee waives any immunity, defense, or protection under any workers' compensation, industrial insurance, or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington); provided, however, that Licensee's waiver of immunity through the provisions of this section extends only to claims against Licensee by Licensor pursuant to this Agreement, and does not include, or extend to, any claims by Licensee's employees directly against Licensee. The Parties hereby acknowledge that this waiver of immunity was specifically negotiated by the Parties.

**16.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LICENSOR SHALL NOT HAVE ANY LIABILITY TO LICENSEE FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR**

**THE SYSTEM, CLAIMS OF CUSTOMERS OF LICENSEE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE(S), OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY), OR OTHERWISE).**

## **17. ASSIGNMENT**

### **17.1 BY LICENSEE**

Licensee shall not assign this Agreement or any portion of its rights in this Agreement, except as follows:

- (a) to any person or entity that controls, is controlled by or under common control with Licensee (the "Acquiring Affiliate") and provides written notice to Licensor; provided that the Acquiring Affiliate certifies to Licensor in writing (and provides such documents as may be reasonably requested by Licensor to establish) that the Acquiring Affiliate: (i) is assuming all of the obligations of Licensee under this Agreement; and (ii) is ready, willing and able to comply with all of the provisions of this Agreement; and, provided further, that Licensee furnishes to Licensor such information regarding the Equipment affected by such assignment or transfer, if any, as may reasonably be requested by Licensor;
- (b) to Licensee's lender(s) for security purposes in connection with the financing and refinancing, from time to time by Licensee, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of Licensee under this Agreement.

## **18. REPAIRS**

### **18.1 LICENSEE'S OBLIGATION**

Licensee must, at all times during the term of any particular SLA, at Licensee's sole cost and expense, keep and maintain the Communications Facility located by Licensee upon the Site in a structurally safe and sound condition and in good repair.

If Licensee does not make such repairs within thirty (30) days after receipt of notice from Licensor requesting such repairs and such repairs are required, then Licensor may, at its option, make the repairs. Licensee, upon receipt of satisfactory documentation, shall pay Licensor on demand Licensor's actual costs in making the repairs, plus Licensor's actual overhead.

If Licensee commences to make repairs within thirty (30) days after any written notice from Licensor requesting such repairs and thereafter continuously and diligently pursues completion of



such repair, then the thirty (30) day cure period will extend for an additional sixty (60) days to permit the Licensee to complete said repairs.

If emergency repairs are needed to protect persons, or property, or to allow the use of the Site, Licensee must immediately correct the safety or use problem, even if a full repair cannot be made at that time, or Licensor may choose to make such repairs at Licensee's expense. Licensee shall obtain approval of the Licensor to access the Site, in accordance with Section 12, and make repairs and will coordinate with Licensor's emergency operations (pursuant to Section 12) and maintenance activities.

## **18.2 LICENSOR'S OBLIGATION**

Licensor must, at all times during the term of any SLA and at Licensor's sole cost and expense, keep and maintain the Site and any improvements located thereon in a structurally sound and safe condition. If Licensee is unable to use a Communications Facility because of repairs required on the Site or for any other reason not caused by the fault of Licensee, then Licensee may, in compliance with temporary use requirements of VMC 20.890.050, immediately erect on the Site or an unused portion of the Site a temporary Communications Facility, including any supporting structure, while Licensor makes repairs to the Site; provided that (i) Licensee will provide Licensor with prior written notice of the proposed location of such temporary facility and an opportunity to inspect such facility upon its completion; (ii) if such proposed location interferes with Licensor's current or potential use of the Site, Licensor may require Licensee to change such proposed location to a more suitable location within or outside of the Site; (iii) Licensor shall proceed diligently to complete such repairs; (iv) such a temporary Communication Facility may be operate for not more than 60 days within a 6-month period commencing when transmission from such facility begins; and (v) such a temporary Communication Facility will be removed by Licensee within thirty (30) days of completion of repairs or replacement of the Site.

If Licensor after thirty (30) days' prior notice to Licensee replaces any improvement on the Site that Licensee has attached Equipment to, Licensee is solely responsible for the cost of the transfer of said Equipment to the new improvement.

If Licensor is required to substantially relocate a Site and/or make related improvements by competent governmental authority and Licensee has Equipment at said Site, Licensor shall provide Licensee the earliest possible notice prior to such relocation or making improvements and Licensee at its option may terminate the SLA under the provisions of section 4.2 and 4.6. In the event, Licensee does not terminate the SLA, Licensee is solely responsible for the cost of the relocation of said Equipment to the new location.

## **19. COOPERATION AND COORDINATION**

**19.1** Licensee acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by Licensor or others under control of Licensor. Upon the occurrence of any interference, Licensee shall have the right to elect any of the remedies in Section 8.6. If Licensee does not terminate the SLA, Licensee shall

fully cooperate and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

**19.2** If any part of the Work depends upon the results of other work by Licensor or others, Licensee shall, prior to commencing such Work, notify Licensor in writing of any actual or apparent deficiencies or defects in such other work that renders it unsuitable for performance of the Work. Failure of Licensee to so notify Licensor shall constitute an acceptance by Licensee of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

## **20. EMERGENCIES**

In the event of an emergency relating to the Equipment, Licensee shall immediately contact Licensor at the emergency phone number below, immediately take all necessary or appropriate action to correct any safety or use problems, including but not limited to the actions in Section 18.2, even if the full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

Licensor: 360-696-8177

Licensee: 1-866-688-6058

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

## **21. CASUALTY OR CONDEMNATION OF A SITE; RELOCATION OF FACILITIES**

**21.1** If there is a casualty to any structure upon which the Equipment is located, Licensor will use reasonable efforts to repair or restore the structure within sixty (60) days and, to the extent Licensee has the other necessary rights to do so, Licensee may immediately erect on the Site or a portion of the Site a temporary Communications Facility while Licensor makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with Licensor's own restoration. Licensee must comply with temporary use requirements of VMC 20.890.050. In the event that Licensee can not relocate upon the Site within sixty (60) days, a Communications Facility reasonably free from technical interference, Licensee shall be entitled to terminate the applicable SLA upon thirty (30) days' prior written notice and subject to Section 4.6. Upon completion of such repair or restoration, Licensee will be entitled to immediately reinstall the Equipment. In the event such repairs or restoration will, in Licensor's reasonable estimation require more than sixty (60) days to complete, Licensee will be entitled to terminate the applicable SLA upon thirty (30) days' prior written notice and subject to Section 4.6.

**21.2** If there is a condemnation of the Site, including without limitation a transfer of the Site by consensual deed in lieu of condemnation, then the SLA for the condemned Site will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Agreement. Any prepaid Annual Fees will be refunded to Licensee on a pro rata basis from the date of transfer of title. Licensee may pursue a separate condemnation award for the

Equipment from the condemning authority provided that such award does not reduce the amount of Licensor's award.

**21.3** If Licensor deems it necessary in its sole discretion to relocate any Licensor facilities to which Licensee's Equipment or Communications Facility are attached, Licensor shall provide Licensee at least thirty (30) days' notice of such relocation; provided that in the event of unexpected damage to such facilities requiring immediate action by Licensor, no prior notice shall be required. Licensee shall either reimburse Licensor for the costs of removal and reinstallation of such facilities by Licensor, which costs shall be agreed upon in advance by the Parties prior to such removal (unless immediate removal is required due to unexpected damage, as described above), or shall arrange for removal and reinstallation of its facilities at its sole cost and expense; provided that any such removal by parties other than Licensor shall be subject to any applicable restrictions set forth in the applicable SLA; and provided further that if Licensee does not remove such facilities in a timely manner and without disruption to Licensor's required schedule, Licensor may remove Licensee's facilities and charge Licensee for the costs of such removal. Licensor shall only relocate Licensee's Equipment or Communication Facility to a Site reasonably free from technical interference. In the event there is no such suitable Site, Licensee shall be entitled to terminate the applicable SLA upon (30) days' prior written notice and subject to Section 4.6.

**21.4** If Licensor is required to relocate any of its facilities within a state, county or city right of way and Licensee has Equipment on such facilities, such relocation shall be made pursuant to Section 21.3.

## **22. SURRENDER OF SITE; HOLDING OVER**

**22.1** Upon the expiration or other termination of a SLA for any cause whatsoever, Licensee must peacefully vacate the applicable Site in as good order and condition as the same were at the beginning of the applicable SLA, except for reasonable use, wear and tear. Licensee has the right to remove its Communications Facility for thirty (30) days after termination. Licensee will repair any damage caused during the removal of the Communication Facility, normal wear and tear excepted. If the Communication Facility is not operated for wireless communications for a period of 12 continuous months, Licensee is required to remove its Communication Facility in compliance with VMC 20.890.110.

**22.2** If Licensee continues to hold any Site after the termination of the applicable SLA, whether the termination occurs by lapse of time or otherwise, such holding over will, unless otherwise agreed to by Licensor in writing, constitute and be construed as a month-to-month tenancy at a monthly License Fee equal to 1/12th of one hundred twenty-five percent (125%) of the Annual Fee for such SLA and subject to all of the other terms set forth in this Agreement. Licensor shall have the option to require Licensee's removal of all Equipment upon giving thirty (30) days written notice of termination of said month-to-month tenancy. If not so removed, Licensor shall have the option to remove such Equipment and charge Licensee for all costs and expenses associated with such removal.

## **23. DEFAULT AND REMEDIES**

### **23.1. LICENSEE'S EVENTS OF DEFAULT**

The occurrence of any one or more of the following events constitutes an "event of default" by Licensee under the applicable SLA:

- (a) If Licensee fails to pay after thirty (30) days' notice from Licensor when due the full amount of any fee or other payment under the applicable SLA including terms and conditions applicable thereto contained in this Agreement;
- (b) If Licensee fails to perform or observe any other term of the applicable SLA, including terms and conditions applicable thereto contained in this Agreement, and such failure continues for more than thirty (30) days after written notice from Licensor; except such thirty (30) day cure period will be extended as reasonably necessary to permit Licensee to complete cure so long as Licensee commences cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure;
- (c) If any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee, such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee is adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof;
- (d) If a receiver, custodian, or trustee is appointed for Licensee or for any of the assets of Licensee and such appointment is not vacated within sixty (60) days of the date of the appointment; or
- (e) If Licensee becomes insolvent or makes a transfer in fraud of creditors.

### **23.2. LICENSEE'S DEFAULT**

If an event of default occurs and is continuing, Licensor (without notice or demand except as expressly required above) may terminate the applicable SLA by at least five (5) days' written notice to Licensee, in which event Licensee will immediately surrender the applicable Site to Licensor. Licensee will become liable for damages equal to the total of:

- (a) The actual costs of recovering the Site;
- (b) The Annual Fee earned as of the date of termination, plus interest thereon, as specified in Section 5.5, from the date due until paid;
- (c) The amount of the Annual Fee and other benefits that Licensor would have received under the applicable SLA for the remainder of the term under the applicable SLA; and
- (d) All other sums of money and damages, if any, owing by Licensee to Licensor.

If at any time during this Agreement any of the events set forth in (a), (b), or (c) of Section 22.1 have previously occurred with respect to fifteen percent (15%) or more of the SLAs, Licensor, at its sole option, is entitled to terminate this Agreement upon thirty (30) days' prior written notice to Licensee. Licensor may elect any one or more of the foregoing remedies with respect to any particular SLA.

### **23.3 LICENSOR'S DEFAULT**

If Licensor defaults in the performance of any of its material obligations with respect to any particular SLA or this Agreement, which default:

- (a) Continues for a period of more than thirty (30) days after receipt of written notice from Licensee specifying such default; or
- (b) Is of a nature to require more than thirty (30) days for remedy and continues beyond such time reasonably necessary to cure (and Licensor has not undertaken procedures to cure the default within such thirty (30) day period and diligently and continuously thereafter pursued such efforts to complete cure), then Licensee may, in addition to any other remedy available at law or in equity, at its option upon at least five (5) days' written notice, terminate the applicable SLA subject to Section 4.6.

### **23.4 DUTY TO MITIGATE DAMAGES**

Licensee and Licensor shall endeavor in good faith to mitigate damages arising under this Agreement.

## **24. REPRESENTATIONS AND COVENANTS**

### **24.1 REPRESENTATIONS OF BOTH PARTIES**

Each Party mutually represents and warrants to the other:

- (a) That it has the full right, power and authority to enter into this Agreement and the SLAs;
- (b) That entering into this Agreement and the performance thereof will not violate any laws, ordinances, restrictions, covenants, or other agreements under which said Party is bound; provided, however, that the foregoing is subject to, and will not limit in any way, the rights of Licensor and the obligations of Licensee under Section 22, and provided further that, to the extent the foregoing representation is made by Licensor, such representation will not apply to any violation or breach that is caused by Licensee's failure to obtain and comply with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement;
- (c) That each of the persons executing this Agreement on behalf of Licensor and Licensee represents and warrants that said Party is a duly organized and existing

municipal corporation under the laws of the State of Washington or a corporation or limited partnership;

(d) That the Party is qualified to do business in each state wherein a Site is located or will be qualified in such state prior to undertaking any activities at the Site that would require the Party to be qualified to do business in such state; and

(e) That the persons signing on behalf of the corporation or limited partnership are authorized to do so; and

(f) That neither Party has had any dealings with any real estate brokers or agents in connection with the negotiation of this Agreement.

## **24.2 REPRESENTATIONS OF LICENSEE**

Licensee represents and warrants:

(a) That it is, and at all times during the Term shall be, properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and Licensee's system of which the Equipment is a part; and (b) That it shall be, and operate as, an independent entity (not a contractor, agent or representative of Licensor) in the performance of the Work and the operation of the Equipment and Licensee's system. In no event shall Licensee be authorized to enter into any agreements or undertakings for or on behalf of Licensor or to act as or be an agent or representative of Licensor.

## **24.3 REPRESENTATIONS OF LICENSOR**

Licensor represents and warrants, to the best of its knowledge, that it owns good and marketable fee simple title, has a good and marketable leasehold interest, or has a valid license, easement or other legal right of use, in the land on which the Site is located and has rights of access thereto. Licensee has the ultimate responsibility to obtain all necessary authority for Licensee's use of each specific Site. In the event of joint ownership of the Site, Licensee shall coordinate and contract with the joint owner of the Site prior to installing any Equipment. Licensor shall not be responsible to Licensee for the actions of any joint owner of the Site.

**24.4** Except as specifically set forth in Sections 23 and 24, Licensor makes no warranties, express or implied, including, without limitation, any warranties of habitability or fitness for a particular purpose with regard to any Site.

## **25. ENVIRONMENTAL MATTERS**

**25.1** Licensor represents and warrants that it will notify Licensee, to the best of its knowledge, of all Environmental Hazards on each Site. Nothing in this Agreement or in any SLA will be construed or interpreted to require that Licensor or Licensee remediate any Environmental Hazards located at any Site unless Licensee or Licensee's officers, employees, agents, or contractors placed the Environmental Hazards on the Site.

**25.2** Licensee will not bring, keep or transport any Environmental Hazards or pollutants to, on or across any Site without Licensor's prior written approval, which approval will not be

unreasonably withheld, conditioned or delayed, except that Licensee may keep on the Site substances used in back up power units, such as batteries and diesel generators commonly used in the wireless telecommunications industry. Licensee's use, storage, handling and disposal of any approved substances constituting Environmental Hazards must comply with all applicable laws, ordinances, regulations and other provisions of this Agreement governing such use, storage, handling and disposal. Under no circumstances will Licensee dispose of any Environmental Hazards or pollutants on any Site.

**25.3** The term "Environmental Hazards" means hazardous substances (as defined in RCW Section 70.105D.020(5)), hazardous wastes, pollutants, asbestos, polychlorinated biphenyl (PCB), petroleum or other fuels (including crude oil or any fraction or derivative thereof and underground storage tanks. The term "hazardous substances" shall be defined in the Comprehensive Environmental Response, Compensation, and Liability Act, and any regulations promulgated pursuant thereto. The term "pollutants" shall be as defined in the Clean Water Act (33 USC Section 1251, et seq.), and any regulations promulgated pursuant thereto. The term "remediate" shall be defined as all actions necessary to satisfy the requirements of the Model Toxics Control Act (RCW Chapter 70.105D) and the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Section 9601, et seq.) and any regulations promulgated pursuant thereto. This provision shall survive termination of the Agreement and any particular SLA.

**25.4** Licensors and Licensee agree to defend, indemnify and hold harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that the indemnitee may suffer due to the existence or discovery of any Hazardous Substance on the Site or the migration of any Hazardous Substances to other properties or release into the environment, that relate to or arise from the indemnitor's activities during or prior to the commencement of this License.

## **26. SUBORDINATION**

**26.1** Licensee agrees that this Agreement and each SLA is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against Licensors' interest or estate therein, and any underlying ground license or master license on a particular Site, all without the necessity of having further instruments executed by Licensee to effect such subordination but with respect to any such liens, leases and licenses arising subsequent to the execution of this Agreement only if trustees or mortgagees will not disturb Licensee under this Agreement and the SLAs.

**26.2** Each SLA may be subject to restrictions or other terms or conditions contained in any underlying ground License, Master License, easement, license, franchise, permit or other instrument of authorization or conveyance (an "Instrument") with respect to a particular Site.

Licensee agrees to commit no act or omission which would constitute a violation of the terms and conditions of any known Instrument for a particular Site:

- (a) Licensors shall not be required to obtain any consent required under any Instrument from the landlord or other party to such Instrument for purposes of this Agreement, unless expressly set forth in the SLA;
- (b) If a restriction contained in an Instrument for a particular Site and not set forth on the applicable SLA prevents Licensee from installing, maintaining or operating the Equipment or accessing the Site, Licensee will be entitled to terminate the affected SLA immediately subject to Section 4.6;
- (c) Upon the termination or expiration of any underlying Instrument with respect to a particular Site, the SLA relating to such Site shall automatically terminate without liability to either Party. In the event of such termination, the SLA with respect to such Site shall terminate concurrently therewith and subject to Section 4.6;
- (d) Upon any sale or other transfer of all or any portion of a Site, the applicable SLA will automatically terminate, subject to Section 4.6, except to the extent the purchaser or transferee and Licensee enter into an agreement for Licensee's continued use of the Site and release Licensors from any further obligation or liability with respect to the Site. Licensors shall have no obligation to request or obtain such agreement from the purchaser or transferee;
- (e) Licensors will not materially breach the terms or conditions of any Instrument with respect to a particular Site in a manner that causes Licensee to lose its use of the Site.

## **27. PROTECTION OF PROPERTY AND PERSONS**

**27.1** Licensee shall take all reasonable precautions which are necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, Licensee shall erect and maintain such barricades, signs, flags, flashers and other safeguards as are reasonably required from time to time by Licensors. Licensee shall reasonably inspect all goods, materials, tools, Equipment and other items in an attempt to discover any conditions which involve a risk of bodily injury (including death) to persons or a risk of damage to any property or environment.

**27.2** All of Licensors' or third party's property damaged, altered or removed in connection with the performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by Licensee to at least as good quality and condition as existed prior to such damage, alteration or removal.

## **28. COMPLIANCE WITH LAWS**

In the performance of the Work and this Agreement, Licensee shall comply and shall ensure that all contractors hired by or acting on behalf of Licensee comply with all applicable:



- (a) Laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority;
- (b) Industry standards and codes; and
- (c) Licensor's standard practices, specifications, rules and regulations which will be provided by Licensor to Licensee on request.

Licensee shall furnish such documents as may be reasonably required by Licensor to effect or evidence compliance.

## **29. PERMITS AND PROTECTION OF EXISTING RIGHTS**

Licensee shall obtain and comply (and shall ensure that all of Licensee's suppliers and subcontractors under contract with it or acting on behalf it comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement. Licensee shall furnish to Licensor such evidence thereof as Licensor may reasonably request. Compliance with this Section 29 shall be the sole responsibility of Licensee and a continuing condition of the use of the Site(s) by Licensee.

## **30. ENTIRE AGREEMENT**

This Agreement and each SLA constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement or any SLA must be in writing and executed by both parties.

## **31. SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement or any SLA shall not affect the other provisions hereof, and this Agreement or SLA shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

## **32. SURVIVAL**

All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement shall survive the completion, termination or cancellation of this Agreement.

## **33. BINDING EFFECT**

This Agreement and each SLA will be binding on and inure to the benefit of the respective Parties' successors and permitted assignees.

## **34. HEADINGS**

The headings of sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or the SLA.

### **35. NON-WAIVER**

The failure of either Party to insist upon or enforce strict performance by the other Party of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

The Parties acknowledge and agree that they have been represented by counsel and each of the Parties has participated in the drafting of this Agreement and each SLA. Accordingly, it is the intention and agreement of the Parties that the language, terms and conditions of this Agreement and each SLA are not to be construed in any way against or in favor of any Party hereto by reason of the responsibilities in connection with the preparation of this Agreement or each SLA.

### **36. NOTICES AND OTHER COMMUNICATIONS**

Any notice, request, approval, consent, instruction, direction or other communication given by either Licensor or Licensee to the other under this Agreement shall be in writing and shall be delivered by both facsimile transmission and first class mail to the individuals denoted below, unless otherwise directed in writing, at the address and facsimile number provided:

For the City:

For Licensee:

#### **Equipment connected to Water Facilities:**

Name/Title:

Name/Title:

Brian K. Carlson/Director of Public Works

Niel Grubb/President & CEO

With cc to Richard Hoffman/Operations Superintendent

Address: City of Vancouver  
P.O. Box 1995  
Vancouver, WA 98668

Address:  
LCW Wireless, LCC  
c/o Cricket Communications, Inc.  
10307 Pacific Center Court  
San Diego, CA 92121

Fax No.: 360-696-8002  
Phone No.: 360-696-8177

Fax No.:  
Phone No.:

Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this Section. Notice deemed received one (1) business day following deposit with reliable courier, etc.

### **37. APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Washington. The venue for any legal action commenced to enforce any provision of this Agreement shall be Clark County, Washington.

### **38. FORCE MAJEURE**

If a Party is delayed or hindered in, or prevented from performance required under this Agreement (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Agreement) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

### **39. TIMELY RESPONSE**

Each Party shall take such prompt action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation of continuing performance of this Agreement.

### **40. EXAMINATION OF RECORDS**

Licensee shall promptly furnish Licensor with such information reasonably related to the Work or the Equipment as may from time to time be reasonably requested by Licensor.

### **41. RISK OF LOSS**

Licensee shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work, unless destruction of or damage to the Equipment is caused by the sole negligence or intentional conduct of Licensor's activities on the Site.

### **41. REIMBURSEMENT AND PAYMENT**

Licensor shall invoice Licensee for all amounts payable by Licensee to Licensor under this Agreement (including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Agreement) as they become due. Licensee shall pay each such invoice in full within thirty (30) days after Licensee's receipt thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2010

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: NEIL GRUBB  
Title: PRESIDENT + CEO

Pat McDonnell, City Manager

APPROVED AS TO FORM:

Ted Gathe, City Attorney

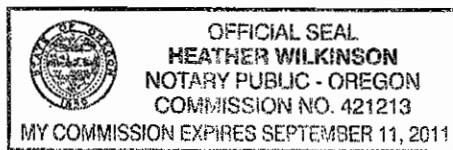
ATTEST: \_\_\_\_\_  
Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

I certify that I know or have satisfactory evidence that Patrick McDonnell 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 City Manager of the City of Vancouver, Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Name: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Notary Public for the state of \_\_\_\_\_  
Residing in \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )



I certify that I know or have satisfactory evidence that Neil Grubbs 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 President & CEO to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Name: Heather Wilkinson  
Dated: 10/28/10  
Notary Public for the state of Oregon  
Residing in Oregon  
My appointment expires: Sep 11, 2011

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Name: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Notary Public for the state of \_\_\_\_\_  
Residing in \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

## **EXHIBIT A SITE LICENSE ACKNOWLEDGMENT**

This Site License Acknowledgment ("SLA") is made to the Master License Agreement between Licensor City of Vancouver, and Lessee LCW Wireless, LLC dated \_\_\_\_\_, 2010. Capitalized terms used in this SLA have the same meaning as such terms in the Master License Agreement unless otherwise indicated.

1. Site Name and/or Number:

Water Station 5

2. Site Address:

5401 Idaho Street, Vancouver WA 98661

3. Site Legal Description:

A portion of the NW1/4 of Section 30, Township 2N, Range 2E  
Parcel # 37910-014

4. The Site is:

Owned by Licensor

5. FCC License Number:  
0015401730

6. General Description of Facility Licensed:

Cricket 8'x 8' Lease area and equipment below Water Tank and North Support Leg. Three (3) total antennas mounted to the Water Tank catwalk.

7. Antenna Physical Description:

Three (3) total antennas, 48"x 6"x 6" and 19.84lbs

8. Electronic Cabinet Physical Description:

Cricket Nortel CMO cabinet attached to a 3'x 5' concrete pad.

9. Transmitter Description: N/A
10. Utility services:  
  
Power provided by: Clark PUD  
  
Telecommunications Landline: Qwest
11. Intermodulation Study Completed and Approved (if applicable): N/A
12. Initial Site Floor Noise Measurement: N/A
13. Drawings Received by Licensor:  
Equipment Layout and Detail: Received (initials): \_\_\_\_\_ Date: \_\_\_\_\_  
Antenna Attachment Detail: Received (initials): \_\_\_\_\_ Date: \_\_\_\_\_  
Site Plans and Elevations: Received (initials): \_\_\_\_\_ Date: \_\_\_\_\_
14. Structural Integrity Study: TBD
15. Site Access Details and Provisions: TBD
16. Plan for Minimizing Visual Impact of Equipment at Site: N/A
17. Construction Work requested of Licensor by Licensee: TBD
18. Coordination Provisions between Licensor and Licensee: TBD

19. Annual Fee:


\$ 1,450.00 month - \$17,400.00 year during Initial Term

\$ 1,700.00 month - \$20,400.00 year during Renewal Term

20. Additional Provisions:



IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2010

  
Name NEIL GRUBB  
Title PRESIDENT + CEO

\_\_\_\_\_  
Pat McDonnell, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Ted Gathe, City Attorney

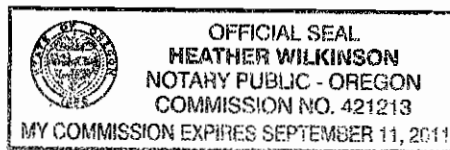
ATTEST: \_\_\_\_\_  
Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

I certify that I know or have satisfactory evidence that Patrick McDonnell 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 City Manager of the City of Vancouver, Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Name: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Notary Public for the state of \_\_\_\_\_  
Residing in \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )



I certify that I know or have satisfactory evidence that Neil Grubb 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 President & CEO to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Name: Heather Wilkinson  
Dated: 10/28/10  
Notary Public for the state of Oregon  
Residing in Oregon  
My appointment expires: Sep 11, 2011

## **EXHIBIT B FEE SCHEDULE**

This Fee Schedule is made a part of the Master License Agreement between Licensor City of Vancouver and \_\_\_\_\_ dated as of \_\_\_\_\_ 2010. Capitalized terms used in this Fee Schedule have the same meaning as such terms in the Master License Agreement ("MLA") unless otherwise indicated.

### **1. Annual Fee**

The Annual Fee applicable to each Site will be negotiated between the Licensor and the Licensee on a site-by-site basis based on the current and projected values of the following factors, as applicable at the time the applicable SLA is executed by the Licensor and the Licensee: location and other site-specific factors; height requirements for proposed Licensee equipment; amount of space used, or rendered unusable by others; the aggregate number of sites proposed to be licensed by the Licensee; and any other factors affecting the interests of the Licensor, in the sole discretion of the Licensor. The Annual Fee with respect to each existing Site will be automatically increased by twenty percent (20%) of the previously term's Annual Fee at the end of the initial term and each renewal term of the MLA, without further notice by Licensor.

### **2. Application Fee** (as per Section 5.2 of the MLA): \$750.

### **3. Monthly Charge for Unauthorized Installations or Material Alterations** (as per Section 6.5 of the MLA):

- a.** \$1,450.00 per month during Initial Term.  
\$1,700.00 per month during Renewal Term.

**EXHIBIT C**  
**WESTERN WASHINGTON COOPERATIVE**  
**INTERFERENCE COMMITTEE**

**WWCIC ENGINEERING STANDARD #6 REV B. (10-91) FOR**  
**EMISSION DESIGNATOR 20A0 THRU 3 & 20FO THRU 3**  
**AND FM BROADCAST**

All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products. Additional filtering required according to frequency and interconnect devices are listed below:

1. Transmitters in the 25 to 54 Mhz range shall have isolation of at least 20 dB followed by a low pass filter or cavity providing a minimum of 30 dB attenuation removed 1.0 Mhz from the operating frequency.
2. Transmitters in the 66 to 88 Mhz range shall have at least 25 dB of isolation followed by a band pass cavity providing at least 20 dB of attenuation 1.0 Mhz removed from the operating frequency.
- 3A. Transmitters in the 88 to 108 Mhz range operating at a power level of 350 watts or less shall have at least 25 dB of isolation followed by a band pass cavity providing at least 25 dB of attenuation 1.0 Mhz from the operating frequency.
- 3B. Transmitters in the 88 to 108 Mhz range operating at a power level greater than 350 watts shall have a band pass cavity providing at least 25 dB of attenuation 1.0 Mhz from the operating frequency.
4. Transmitters in the 130 to 225 Mhz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 25 dB attenuation 1.0 Mhz removed from the operating frequency.
5. Transmitters in the 400 to 470 Mhz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 15 dB of attenuation 1.0 Mhz removed from the operating frequency.
6. Transmitters in the 806 to 960 Mhz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 15 dB of attenuation 1.0 Mhz removed from the operating frequency.

The following general engineering standards shall be observed:

1. A band pass cavity or crystal filter is recommended at the input of all receivers. Its purpose is to protect against RF energy "off frequency" from mixing in a non-linear device such as the first RF amplifier in a receiver, which can re-radiate causing interference.
2. The band reject duplexer (cross notch duplexer) may not be used without a cavity/isolator outlined above.
3. Single braid coax cable is prohibited. Double shielded cable must have over 98.5% shield coverage.
4. jacketed coaxial cable is required, unjacketed transmission line of any type is prohibited.
5. Use of "N," "TNC" or "DIN" connectors is preferred over other non-constant impedance types. Every effort should be made to prevent the use of coax adapters.
6. All equipment is to be grounded and shielded. Grounding is to be done with copper strap or heavy braid to a station ground grid. The "green wire" of the AC power plug is not an acceptable grounding point.
7. Transmitting systems must be checked periodically, which includes the isolator, VSWR on the load port of the isolator, and overall system insertion loss.
8. Bare metallic ties are prohibited for securing transmission lines to towers. In the case of large lines, use of stainless steel or galvanized hangers is permitted. Hardware capable of rusting and dissimilar metals are prohibited. Transmission lines are to be insulated from metallic structures/objects. It is the duty of the installation personnel to prevent "diode junctions" from taking place.
9. All loose wire or metal objects are to be removed from the tower and site. Metal fencing should be plastic coated.
10. All equipment shall be licensed and operated in full accordance with all applicable rules and regulations of the regulating agency, (FCC, NTIA). There shall be no modifications which violate "FCC Type Acceptance."
11. It is recommended that all equipment be labeled with the owner's name and a current 24-hour telephone contact number (service agency is acceptable).
12. Every effort should be made to protect the equipment from lightning damage. Feed-through lightning protectors should be used on all coaxial cable connections to equipment enclosures. Gas, Gap and MOV protectors should be used on Control, Audio, Telephone, and Power connections.