



CITY OF EVERETT

COMMUNICATIONS ANTENNA SITE

LEASE

**THIS LEASE** made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF EVERETT, a municipal corporation of the State of Washington, hereinafter referred to as “Lessor”, and RCA Telecom LLC, hereinafter referred to as “Lessee”.

**WITNESSETH:**

**WHEREAS**, the Lessor is the owner of property used for municipal and utility purposes that includes communications antenna sites, located at 3702 Tulalip, Everett, WA 98201, known as **Rucker Hill Site**, as described in Exhibit “A”, which shall hereinafter be referred to as the “Site”; and

**WHEREAS**, the Lessee desires to lease space at the Site for its antennas and associated equipment on the Site in accordance with the provisions contained herein;

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

1. **SITE:** Lessor does hereby lease to Lessee and Lessee hereby leases from Lessor, space for three (3) RAD Centers for Radio Antenna, one (1) RAD Center for Non-Radio Transmitter Receiver and two (2) Telco Cabinets for Lessee equipment on the Site, as described in Exhibit “A” attached hereto and incorporated herein by reference. The exact placement of the equipment to be located on the Site shall be agreed to between the Lessor and Lessee.

2. **TERM:** The Initial Term of this Lease shall be for two (2) years commencing on September 1, 2020, and ending on August 31, 2022, unless otherwise terminated as provided below. As provided in Section 5, Lessee is entitled to extend this Lease for up to five (5) one (1) year terms.

3. **USE:** The Lessee shall use the Site as follows:

i. The Lessee shall install and service the antennas on the Site to maintain the integrity and safety of the Site as long as this Lease remains in force. Lessee has the right to nonexclusive use of the existing access located over, across and upon Lessor’s real property adjoining the Site for the purpose of ingress to and egress from the Site; however, control of any key provided Lessee to said access must be tightly maintained.

ii. Lessee shall comply with the requirements of Lessor regarding the use of the Site as stated in this Lease. Lessee shall submit its construction and installation plans and list of contractors and subcontractors for written approval by Lessor prior to any construction or installation work on the Site. However, Lessor’s approval shall not constitute a warranty of such plans and/or contractors and subcontractors or the assumption of any liability for such plans and/or contractors and subcontractors by Lessor. Any structural enhancements to the Site required for Lessee’s antennas and related equipment shall be at Lessee’s sole risk and expense. At completion, such structural enhancements shall become the

property of Lessor and subject to the provisions of this Lease and documentation to that effect shall be provided by Lessee upon the request of Lessor. Lessee shall provide all labor for the installation, maintenance and repair of Lessee's antennas and related equipment on the Site. After initial installation of Lessee's antennas and related equipment, Lessee shall not, without prior notice to and approval from Lessor, perform or arrange to perform any activities on the Site.

iii. Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees) arising from Lessee's construction activities, any act or omission of Lessee or its employees, agents or independent contractors, or the breach of this Lease, except to the extent attributable to the negligent or intentional act or omission of Lessor. Lessee shall assume all risks in connection with access to the Site and the installation, operation, maintenance and removal of Lessee's equipment or any structural enhancement.

iv. With the permission of Lessor, Lessee has the right to authorize the use of the aforesaid access by Lessee's contractors, agents, servants, employees and permittees when it is necessary for them or any of them to have access to the Site or the facilities used to furnish utility services to the Site, however, distribution of a key to the Site or access by Lessee shall be made only upon the prior written consent of Lessor. Lessor reserves the right to access the Site for purposes of inspection and operating, maintaining and servicing its property, improvements and equipment. Lessee shall provide Lessor with the names of individuals authorized on behalf of Lessee to access the Site and facilities subject to this Lease. Lessee must provide for separately metered utility services at the Site, unless the Site owner or operator can accommodate submetering. Subject to the provisions of this Lease and to obtaining Lessor's approval, any work by Lessee on the Site and all required permits, Lessee can:

- a. Transmit and receive radio signals on various frequencies;
- b. Furnish, install and use in, upon and under and remove from the Site such wires, fiber cables, equipment and other property of whatsoever kind and nature as Lessee deems necessary;
- c. Connect such wires, fiber cables, and equipment to utility lines adjoining the Site; and
- d. Install a standby power generator for Lessee's exclusive use at a location on the Site acceptable to both parties.

v. All work done by Lessee at the Site shall be done in a lawful manner and in conformity with all applicable laws, ordinances and regulations. Use by Lessee of the Site shall not conflict with Lessor's use of the Site and related facilities. Lessee agrees that its use of the Site shall not conflict with the use of the Site and related facilities of other users. Lessee shall label all antennas and equipment in a manner that provides readily visible ownership identification.

vi. After receipt of written authorization by the Lessor; Lessee is authorized to construct on the property; and Lessee has the right to prepare, maintain and alter the Site for Lessee's business operations and to install fiber cables and transmission lines, connecting antennas to the transmitters and receivers.

vii. Lessee agrees that in the event there is any interference with Lessor's transmitters and/or receivers or in the event there is any interference with the transmitters and/or receivers of other lessees established at the Site prior to the date of this Lease, caused by Lessee's transmitter(s) and/or receiver(s), which is not remedied by Lessee within seventy-two (72) hours of verbal notification by Lessor, the Lessee agrees to cease using the equipment which is creating the interference (except for short tests necessary for the elimination of the interference) until the interference is eliminated. Provided, however, notwithstanding any language herein, Lessee agrees that in the event that Lessee's wireless communications facility, installation or equipment causes any interference with a public safety communications system(s) whether said system is existing, planned or yet to be constructed that is not remedied by Lessee within six (6) hours of verbal notification by the public safety communications system, Lessee agrees to cease using the facility or equipment which is creating the interference (except for short tests for the elimination of the interference when authorized by the public safety communications system) until the interference is eliminated to a standard and manner acceptable to the public safety communications system.

4. **RENT:** On the first day of each and every calendar month commencing on the first day of the first calendar month of the Initial Term, Lessee shall pay to the Lessor rent as follows:

i. The Lessee shall pay rent to the Lessor at the monthly rate of SIX THOUSAND and no/100 DOLLARS (\$6,000) ("Rental Fee") in U.S. Dollars, or Lessee may choose to pay said rent in advance on an annual or semi-annual basis.

ii. Said rent shall increase on September 1, 2021, and each September 1<sup>st</sup> of each subsequent year of the term thereof by an amount not to exceed five percent (5%) of the Rental Fee in effect for the previous year.

iii. Such rent shall be paid as and when due to City of Everett, as designated in this Lease, or at such other address which the Lessor designates by written notice to Lessee.

iv. Rent shall not include electricity. Lessee shall have a separate meter (or submeter if allowed by Site owner or operator) to measure Lessee's electric consumption and Lessee shall pay directly to the public utility company for any electricity used by Lessee's equipment (or if submetering is allowed, then Lessee shall pay Lessor for any electricity used by Lessee's equipment and Lessor shall pay the public utility company for the electric consumption at the Site).

5. **OPTION TO EXTEND:** Lessee is hereby given the option to extend the term of this Lease in accordance with all of the provisions contained in this Lease except rental, for five (5) one (1) year terms (the "Option Term(s)"), by giving written notice of exercise of the option ("Option Notice") to Lessor sixty (60) days or more prior to expiration of each Term or Option Term, as applicable. Failure to provide the required Option Notice for the first Option Term shall result in the termination of this Lease upon the expiration date of this initial term or in the case of failure to provide the Option Notice for a later Option Term, then this Lease shall terminate at the end of the then current Option. In order to be effective, an Option Notice must, unless waived in writing by the City's Real Property Manager or designee, be accompanied by an updated Certificate of Insurance showing that the coverages required under this Lease will be in force for the duration of the Option Term exercised by the Option Notice.

The Rental fee during each Option Term shall be negotiated between the parties and evidenced in an addendum to this Lease. If the parties are unable to agree on the monthly rent for the extended term within thirty (30) days of the Option Notice date, then within thirty (30) days after giving of the

Option Notice, Lessee shall retain an MAI appraiser who shall render a written appraisal of the fair market rental of the leased premises. A copy of Lessee's appraisal shall be given to Lessor within sixty (60) days after giving of the Option Notice. Lessor and Lessee shall then negotiate regarding the fair market rental of the leased Site. If Lessor and Lessee are unable to reach an agreement as to the fair market rental of the leased Site within thirty (30) days of the receipt of Lessee's appraisal by Lessor, Lessor shall retain an MAI appraiser who shall render a written appraisal of the fair market rental of the leased premises as of the date of such appraisal. A copy of the appraisal made by Lessor's MAI appraiser shall be given to Lessee within one hundred twenty (120) days of the receipt of Lessee's appraisal by Lessor. If Lessor and Lessee are unable to reach an agreement as to the fair market value of the leased Site within thirty (30) days of the receipt of Lessor's appraisal by Lessee, the MAI appraisers previously retained by Lessor and Lessee shall choose a third MAI appraiser with knowledge of properties in Snohomish County, Washington. If the appraisers chosen by Lessor and Lessee cannot agree upon the selection of the third MAI appraiser within twenty (20) days after being requested to do so, the third appraiser shall be designated by the Presiding Judge of the Snohomish County Superior Court on application of either party upon ten (10) days notice to the other. The three (3) MAI appraisers shall fix and determine by majority vote the fair market rental of the leased premises as of the date of their appraisal. The decision of the appraisers shall be final and binding on the parties. Under no circumstance, however, shall the base monthly rent for any Option Term be less than the monthly rental rate existing at the end of the preceding term. In the event either Lessor or Lessee does not agree with the decision of the appraisers regarding the fair market rental, either party may terminate this Lease upon thirty (30) days written notice. Notwithstanding the foregoing, during the period of this MAI appraisal process where the Rental fee is not yet agreed upon by the parties but the applicable Option Term has begun, Lessee shall continue to pay the monthly rental rate existing at the end of the preceding term, and shall then promptly "true up" any additionally required rental fees at the conclusion of the appraisal process.

This option may be exercised by Lessee only in the event that all rents have been fully paid and all provisions of this Lease on the part of Lessee to be observed by Lessee have been fully and faithfully observed. A new lease agreement for the Option Terms shall be unnecessary, as this Lease constitutes a present demise for both the Initial Term and the Option Terms.

**6. ENGINEERING STANDARD AND PRACTICES:** Lessor shall have engineering supervision over all equipment located on the property. Such supervision shall include: a) Frequency coordination and acceptability; b) Engineering specifications; c) Establishment of standards and practices consistent with and necessary for the avoidance or elimination of interference; and d) Acceptability of equipment, including radio transmitters and protective devices; and any decision on any of the foregoing matters by the Lessor shall be binding upon the Lessee. Lessor will furnish Lessee with the reasons for any of its decisions in this matter. Any interference caused by radio or television transmitting and/or receiving equipment to existing licensees shall be corrected and eliminated immediately by the party and/or parties causing the interference.

**7. LEASE TAX:** The possessory interest of Lessee in the property herein leased is subject to taxation under the laws of the State of Washington (Ch. 61, 1975-1976 Laws, 2d Ex. Sess., as amended) at the present rate of twelve point eighty-four percent (12.84%), or as may be amended by Washington State legislation, of the taxable rent to be paid to the Lessor monthly under the terms of this Lease. This tax is in addition to the monthly rent required above. Lessee agrees to pay and the Lessor agrees to collect and pay over to the State Department of Revenue the aforesaid leasehold excise tax in accordance with the statutes governing it.

8. **UTILITIES AND FEES:** Lessee agrees to pay all charges for all utilities and services utilized by Lessee on the property during the term of the Lease. All other items, including all license fees and other governmental charges assessed on Lessee (except property taxes and assessments which will be handled pursuant to the provisions in previous sections) will be paid directly by Lessee, failing which the Lessor may pay and bill Lessee, as additional rent, with interest at the highest rate allowed by law.

9. **ASSIGNMENT AND SUBLETTING:**

A. **General Prohibition - Consent Required.** Lessee shall not assign or transfer this Lease or any interest or rights therein, nor delegate its duties under this Lease, nor sublease the whole or any part of the Site, nor grant an option for assignment, delegation, transfer or sublease for the whole or any part of the Site, nor shall this Lease or any interest thereunder be assignable, delegable or transferable by operation of law, or by any process or proceeding of any court or otherwise without obtaining the prior written consent of Lessor. If Lessor gives its consent to any assignment, delegation, sublease or other transfer, this paragraph shall nevertheless continue in full force and effect, and no further assignment, delegation, sublease or other transfer shall be made without Lessor's consent.

B. **Notice by Lessee – Production of Records.** If Lessee desires to assign, delegate, sublease or transfer, or grant an option for assignment, delegation, sublease or transfer for, the whole or part of the Site, or any portion of this Lease or any interest therein, Lessee shall notify Lessor in writing of said desire to assign, delegate, sublease, transfer or to grant an option and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment, delegation, sublease, transfer or grant to a third party. The notification shall include, but not be limited to, the proposed date of the assignment, delegation, sublease, transfer or grant, a description of the expected terms of the assignment, delegation or sublease or other transfer or grant and a full disclosure of any and all payments and any and all other consideration of any kind to be received by Lessee. Upon request by Lessor, Lessee shall provide:

- i. a financial statement of the proposed assignee, delegatee, sublessee, transferee or grantee;
- ii. a copy of the assignment, delegation, sublease or other transfer or grant document;
- iii. an affidavit from the proposed assignee, delegatee, sublessee, transferee or grantee stating it has examined this Lease, has had the opportunity to consult with legal counsel regarding the terms of the Lease and understands all such terms and conditions, agrees to assume and be bound by all of the Lessee's obligations and covenants under this Lease as if it were the original Lessee hereunder; and
- iv. any other documents or information requested by Lessor related to the assignment, delegation, sublease or other transfer or grant.

C. **Approval by Lessor -- Fees.** Lessor shall review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date of assignment, delegation, sublease, transfer or grant. Disapproval of any such request shall be final and binding on the Lessee. Lessor shall charge to Lessee a reasonable fee for administrative costs for the review and processing of any assignment, delegation, sublease or other transfer or grant.

D. **Included Property.** "Included Property" shall mean the leasehold improvements added by the Lessee and any non-removable fixtures purchased by the Lessee attached thereto that are transferred

to the assignee or sublessee as part of the assignment, sublease or other transfer. The value of the included property shall be documented by appropriate appraisals, financial statements or other business records prepared by an independent and qualified source.

**10. CONDITION OF SITE:** It is understood that Lessee has inspected the Site and takes it "AS IS" without any warranties or representations regarding fitness, condition or suitability. Lessor is not obligated by this Lease to make any changes, removals, or repairs of any kind.

**11. NUISANCE:** Lessee shall not permit the existence of any nuisance on the Site; shall keep the same in clean and safe condition and free of any explosive, flammable or combustible material which would increase the risk of fire, except such material necessary to Lessee's or any permitted sub-Lessee's business; shall not handle or store any dangerous or potentially dangerous materials or any hazardous or toxic materials, as defined under state or federal laws; and shall not permit the accumulation of junk, noxious weeds, debris or other unsightly materials. Lessee shall, at its sole expense, keep the Lessee's portion of the Site and any improvements in good repair.

**12. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE:**

**A. Definitions.** "Hazardous Materials" as used in this Lease shall mean:

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

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

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

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

iii. Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

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

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

**B. Environmental Compliance.**

i. In its use and occupancy of the Site, the Lessee shall, at the Lessee's own expense, comply with all federal, state and local laws and regulations now or hereafter in effect related to Hazardous Materials and the environment which are applicable to the Site, Lessee's business or any activity or condition on or about the Site ("the Environmental Laws"). The Lessee warrants that its business and all

its activities to be conducted or performed in, on or about the Site shall comply with all of the Environmental Laws. The Lessee agrees to change, reduce or stop any non-complying activity or install necessary equipment, safety devices, pollution control systems or other installations as may be necessary at any time during the term of this Lease to comply with the Environmental Laws.

ii. The Lessee shall not, without first obtaining the Lessor's prior written approval, use, generate, release, handle, spill, store, treat, deposit, transport, sell or dispose of any Hazardous Materials in, on or about the Site. In the event, and only in the event, that the Lessor approves any of the foregoing, the Lessee agrees that such activity shall occur safely and in compliance with the Environmental Laws.

iii. The Lessee shall not cause or permit to occur any violation of the Environmental Laws on, under or about the Site, or arising from the Lessee's use or occupancy of the Site.

iv. The Lessee shall, in a timely manner and at the Lessee's own expense, make all submissions to, provide all information required by and comply with all requirements of all governmental or regulatory authorities ("the Authorities" or "Authority") with jurisdiction under the Environmental Laws. If the Lessee fails to fulfill any duty imposed under this Section 12 within a reasonable time, the Lessor may do so; and in such case, the Lessee shall cooperate with the Lessor in order to prepare all documents the Lessor deems necessary or appropriate to determine the applicability of the Environmental Laws to the Site and the Lessee's use or occupancy thereof, and for compliance with the Environmental Laws, and the Lessee shall execute all documents promptly upon the Lessor's request. No such action by the Lessor and no attempt made by the Lessor to mitigate damages shall constitute a waiver of any of the Lessee's obligations under this Section 12.

v. Should any Authority demand that a cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials which occurs during the term of this Lease at or from the Site, or which arises at any time from the Lessee's use or occupancy of the Site, then the Lessee shall, in a timely manner and at the Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and the Lessee shall carry out all such cleanup or remediation plans. Any such cleanup or remediation plans are subject to the Lessor's prior written approval. Although the Lessor reserves the right to review and approve such cleanup or remediation plans, the Lessor assumes no responsibility for such plans or their compliance with the Environmental Laws.

C. Indemnification.

i. The Lessee shall be fully and completely liable to the Lessor for any and all cleanup and/or remediation costs and expenses and any and all other charges, expenses, fees, penalties (civil and criminal) imposed by any Authority arising out of the Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials on or about the Site. The Lessee shall indemnify, defend and save the Lessor harmless from any and all of the costs, expenses, fees, penalties and charges assessed against or imposed upon the Lessor (as well as the Lessor's reasonable attorney's fees, costs and expenses) by any Authority as a result of the Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials or as a result of the Lessee's failure to provide all information, make all submissions and/or take all steps required by all Authorities under the Environmental Laws.

ii. The Lessee shall indemnify and hold the Lessor harmless from any and all claims, liabilities, lawsuits, damages and expenses, including reasonable attorney's fees, for injuries to persons or death, property damage, loss or costs proximately caused by the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by the Lessee or any of its agents, representatives or employees on or about the Site.

D. Reporting Requirements. The Lessee shall comply with the Environmental Laws requiring the submission, reporting or filing of information concerning Hazardous Materials with the Authorities and shall provide to the Lessor a full copy of any such submission, filing or report as submitted within fifteen (15) days of such submission.

E. Right to Check on the Lessee's Environmental Compliance. The Lessor expressly reserves the right to conduct, and the Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections and reviews of the Site as the Lessor, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

F. Remedies. Upon a material default by the Lessee under this Section 12, the Lessor shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the Lessor:

i. At the Lessor's option, to terminate this Lease if Lessee fails to cure the default upon reasonable notice under the circumstances; and/or

ii. At the Lessor's option, to perform such response, remediation and/or cleanup as is required to bring the Site and any other property owned by Lessor affected by the Lessee's default into compliance with the Environmental Laws and to recover from the Lessee all of the Lessor's costs and expenses in connection therewith; and/or

iii. To recover from the Lessee any and all damages associated with the default including, but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Site or any other property owned by Lessor, loss of business and sales by Lessor and other of Lessor's lessees, diminution of value of the Site and/or other property owned by Lessor, the loss of or restriction of useful space in or on the Site and/or other property owned by Lessor, and any and all damages and claims asserted by third parties and the Lessor's attorney's fees, costs and expenses.

G. Remediation on Termination of Lease.

i. Upon the expiration or earlier termination of this Lease, the Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Site, and the Lessee shall undertake whatever other action may be necessary to bring the Site into full compliance with the Environmental Laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to the Lessor's prior written approval. Although the Lessor reserves the right to review and approve the Termination Cleanup process, the Lessor assumes no responsibility for it or its compliance with the Environmental Laws.

ii. If the Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, the Lessor may elect to perform such Termination Cleanup after providing the Lessee with written notice of the Lessor's intent to commence Termination

Cleanup and after providing the Lessee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless the Lessor is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If the Lessor performs such Termination Cleanup after said notice and the Lessee's failure to perform same, the Lessee shall pay all of the Lessor's costs and expenses.

H. Survival. The Lessee's obligations and liabilities under this Section 12 shall survive the expiration or earlier termination of this Lease.

**13. COMPLIANCE WITH LAW:** Notwithstanding any other provision in this Lease to the contrary, Lessee, at its sole cost, shall comply with all laws, statutes, ordinances, regulations, rules, and other governmental requirements (hereinafter called "laws"), in performing or observing its obligations under this Lease. The provisions of this Section shall not supersede, but shall be in addition to, any other provisions in this Lease, which impose a higher standard of care or duty by Lessee.

**14. INDEMNIFICATION:** The Lessee hereby agrees to defend and indemnify the Lessor from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Lessee (or its employees, agents, representatives, contractors and subcontractors) relating to this Lease. The Lessee is obligated to defend and indemnify the Lessor pursuant to this Section whether a Claim is asserted directly against the Lessor, or whether it is asserted indirectly against the Lessor, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the Lessor. The Lessee's duty to defend and indemnify pursuant to this Section is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Lessee. The Lessee shall not indemnify the Lessor for Claims caused solely by the negligence of the Lessor. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or damage to property for which the Lessee is to indemnify the Lessor is caused by or results from the concurrent negligence of (a) the Lessee, its employees, contractors, subcontractors or agents and (b) the Lessor, then the Lessee's duty to indemnify shall be valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the Lessor, the Lessee specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Lessee recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section: (1) "Lessor" includes the Lessor's officers, employees, agents, representatives, contractors, subcontractors, and consultants and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. In the event it is necessary for Lessor to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Lease, all such fees, expenses and costs shall be recoverable from the Lessee.

**15. LIABILITY INSURANCE:** The Lessee shall procure and keep in force during the term of this Lease, at Lessee's own cost and expense, commercial general liability (CGL) insurance written on a standard ISO version policy form, or its equivalent, with a company who is rated at least "A" or better and with a numerical rating of no less than 7 by A.M. Best Company and which is acceptable to the Lessor. Said CGL insurance shall be on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate including, but not limited to, premises-operations liability, blanket contractual liability and broad form property damage.

Prior to the commencement of this Lease, the Lessee agrees to supply the Lessor with a Certificate of Insurance establishing: a) that its insurance obligation as herein provided have been met, b) that the City of Everett, its officers, employees and agents are named as "Additional Insureds" with respect to this Lease, and c) that said liability insurance shall apply as primary insurance on behalf of such Additional Insureds. The Lessee shall promptly provide Lessor with an updated Certificate of Insurance upon Lessor's written request.

If the Lessee is self-insured, Lessee shall provide Lessor with a Certificate of Self-Insurance acceptable to Lessor and that complies with the above policy requirements.

The Lessor reserves the right to require reasonable increases in the limits of coverage from time to time during the term of this Lease.

**16. TERMINATION:** This Section is in addition to any other provision of this Lease authorizing or otherwise relating to early termination of said Lease.

A. Termination of Lease for Failure to Receive Governmental and Jurisdictional Approvals: Lessee may terminate this Lease upon written notice to Lessor in the event Lessee is not able to timely obtain (or is denied) any Governmental and Jurisdiction Approvals required by Lessee to make its contemplated and intended use of the Site commercially viable, as determined by Lessee in its sole discretion. Governmental and Jurisdictional Approvals shall include, without limitation, any or all governmental, regulatory, or self-regulatory licenses (including FCC broadcast licenses), permits (construction, building, special use, administrative, etc.), and approvals of any other necessary applications, exceptions, variances, or exemptions. Lessee represents it will diligently apply for such Governmental and Jurisdictional Approvals, and Lessor agrees to reasonably cooperate with Lessee in any application for Governmental and Jurisdictional Approvals (reasonable costs incurred to be reimbursed by Lessee except to the extent the applicable Governmental and Jurisdictional Approval is to be issued by Lessor). In the event any Governmental and Jurisdictional Approval is preliminarily or initially denied, Lessee shall have the right but not the obligation to appeal such denial to a final decision that is not subject to any further appeal.

B. Termination of Lease Without Cause: Lessor may terminate this Lease upon three hundred sixty (360) days written notice to Lessee. Following the lapse of the three hundred sixty (360) days-notice period, Lessor may re-enter and occupy the Site.

C. Damage or Destruction: Upon destruction, partial destruction or inability to use the Site for its intended purpose, Lessor is under no obligation to reconstruct or repair said Site and either Lessor or Lessee may terminate this Lease.

D. Lessee's Insolvency: Lessor may terminate this Lease upon Lessee's insolvency if Lessee is the subject of an involuntary bankruptcy proceeding or commences a voluntary or involuntary bankruptcy proceeding or makes an assignment for the benefit of creditors or if a receiver or other liquidating officer is appointed for Lessee.

E. Lessee's Breach:

i. Lessor may terminate this Lease upon thirty (30) days' prior written notice to Lessee of intent to terminate on the first or second or third occurrence of Lessee's failure to pay rent or additional

rent [including, but not limited to, Assignment and/or Sublease Premiums as set forth in Section 9 (Assignment or Sublease) of these General Terms and Conditions] by the tenth (10<sup>th</sup>) day of the month that it is due; provided, however, that if Lessee cures the non-payment within that thirty (30) day period after receipt of notice, then Lessor's notice of intent to terminate is voided and the Lease and Lease term shall continue. Lessor may, without any Lessee right to cure, terminate this Lease upon thirty (30) days' prior written notice to Lessee of intent to terminate on any occurrence after the third occurrence of Lessee's failure to pay rent or additional rent [including, but not limited to, Assignment and/or Sublease Premiums as set forth in Section 9 (Assignment or Sublease) of these General Terms and Conditions] by the tenth (10<sup>th</sup>) day of the month that it is due.

ii. Lessor may terminate this Lease if Lessee breaches or fails to perform or observe any of the terms and/or conditions of this Lease, other than payment of rent, and fails to cure such breach or default within thirty (30) days after written notice from Lessor or such longer period, up to sixty (60) days, as may be reasonably required, within Lessor's reasonable discretion, to diligently complete a cure commenced within that thirty (30) day period and being diligently and continuously pursued by Lessee.

F. Termination Process: Unless otherwise specified in this Lease, prior written notice of termination shall be delivered by certified mail, return receipt requested, and shall be effective upon receipt of such notice, as evidenced by the return receipt. Upon such termination, Lessee shall be entitled to the reimbursement of any rent prepaid by Lessee for any period after termination.

G. Nonexclusive Remedy: Termination under this Section shall be in addition to and not in limitation of any other remedy of Lessor at law or in equity. Termination shall not release Lessee from any liability or obligation with respect to any matter occurring prior to such termination.

**17. REMOVAL OF IMPROVEMENTS**: Lessee shall have the right at any time during Lessee's occupancy of the leased property, and the obligation within sixty (60) days after expiration or earlier termination of this Lease, to remove in a workmanlike and careful manner and without interference or damage to any other equipment, structures, or operations on the Site, any and all buildings, structures, improvements, fixtures, equipment, including antennas, fittings, and lines, owned or placed by Lessee, in, under or upon the leased property, or acquired by Lessee whether before or during the term of this Lease, and restore the Site to its condition prior to the commencement of the Lease, reasonable wear and tear excepted. Restoration of leased property shall include, but shall not be limited to, removal of antennas, removal of lines and equipment, and removal of rubble and debris.

Furthermore, should Lessee fail to remove said property or improvements as required by above, Lessee hereby grants Lessor the absolute right and title to the affected improvements upon ninety (90) days written notice to Lessee, to keep, convey, destroy, or otherwise dispose of the improvements in any manner Lessor chooses, and, in addition, Lessee agrees to pay any costs incurred by Lessor in doing so, within thirty (30) days of receipt of Lessor's statement therefor.

All costs and expenses for removal of Lessee's facilities and restoration of the Site shall be borne by the Lessee, and Lessee shall hold Lessor harmless from any portion thereof.

The provisions of this Section shall survive the termination of this Lease.

**18. CONDEMNATION**: If the Site or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain or shall be transferred in lieu of

condemnation to any authority entitled to exercise the power of eminent domain, the effect of the taking or transfer upon this Lease shall be as follows:

A. If only a part of the Site is taken or transferred leaving the remainder of said Site in such location and in such form, shape and size so that, in the sole opinion of Lessee, it is still practical to conduct business thereon, the monthly rental required to be paid by Lessee to Lessor by Section 4 of this Lease shall remain unaffected. If Lessee determines in its sole discretion that it is not practical to conduct business on the Site, Lessee may terminate the Lease immediately.

B. If the whole of the leased Site is taken or transferred, Lessee may at any time thereafter terminate this Lease by giving Lessor ten (10) days notice in writing of such termination. If the Site is taken or transferred under the circumstances described above, Lessee shall be entitled to any award or compensation from the condemning authority for or attributable to the taking or relocation of the buildings, improvements, fixtures and equipment owned by Lessee. Lessor agrees to return any unearned rent to Lessee. Lessee agrees that it is not entitled to and hereby disclaims any other award for such taking.

**19. RELOCATION:** Lessee agrees that the Lessee and its successors or assigns are not subject to nor entitled to any relocation assistance as provided in the Uniform Relocation and Real Property Acquisition Regulations.

**20. RIGHT OF RE-ENTRY:** In the event of any termination, delinquency or default, Lessor reserves the right to re-enter all areas of the property anytime during this Lease without extinguishing the Lessee's obligation to pay rent for the balance of any Term.

**21. NOTICES:** All notices hereunder may be delivered, sent by nationally recognized, overnight delivery service or mailed. Any notice shall be deemed given on a) the date personally delivered to the other party and a signed receipt obtained; or b) three days after deposit, postage prepaid in any United States Postal Service branch or official depository; whichever shall occur earliest. If mailed, they shall be sent by **CERTIFIED or REGISTERED MAIL** to the following respective addresses:

**To Lessor:**

The City of Everett  
c/o City Clerk  
City Hall  
2930 Wetmore Avenue  
Everett, WA 98201

City Attorney  
City Hall  
2930 Wetmore Avenue  
Everett, WA 98201

Real Property Manager  
3200 Cedar Street  
Everett, WA 98201

**To Lessee:**

RCA Telecom LLC  
Attn: General Counsel  
233 S. Wacker Drive #4300  
Chicago, IL 60606

**22. HOLDOVER:** If Lessee shall hold over after the expiration of the initial Term of this Lease or after the First or Second Option Term of this Lease, such tenancy shall be from month to month only

and upon all the terms, covenants and conditions hereof. Acceptance by Lessor of rent after such expiration or early termination shall not result in a renewal of this Lease nor affect Lessor's right of re-entry or any rights of Lessor herein or as otherwise provided by law or equity. If Lessee fails to surrender the Site upon the expiration of this Lease despite demand to do so by Lessor, Lessee shall pay two (2) times the rent herein specified (prorated on a monthly basis), interest, Lessor's attorney's fees and costs and shall indemnify and hold Lessor harmless from all loss or liability including, but not limited to, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender. Further, Lessee shall pay monthly rent during the holdover in the amount required immediately prior to the expiration, increased by two times the rent herein specified.

**23. WAIVERS:** The waiver by the Lessor of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

**24. LIENS:** Lessee shall keep the Site free and clear of any liens and encumbrances arising or growing out of the use and occupancy of said Site by Lessee. At the Lessor's request, Lessee shall furnish the Lessor with written proof of payment of any item which would or might constitute the basis for such a lien on the Site if not paid.

**25. PLACE OF PAYMENT:** All rental payments and all other payments payable to Lessor hereunder shall be designated as payments in connection with an antenna site lease and shall be paid to Lessor at **City of Everett, 2930 Wetmore Avenue, Everett, Washington 98201, Attn: City Treasurer**, unless and until Lessor designates some other party or address to receive said payments.

Written notices shall be delivered personally or deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

**26. RF COMPLIANCE:** Lessee agrees to comply with all Federal Communications Commission ("FCC") rules. Prior to commencement of Lessee's operations and at all other times that Lessor may reasonably request, Lessee shall furnish Lessor with a radio frequency ("RF") site analysis that evaluates the simultaneous operation of all transmitters at the Site and compares the radiated power density in all accessible areas with the FCC maximum permissible exposure ("MPE") limits for workers and the general public. The power density within all accessible areas of the Site must not exceed the FCC specified MPE limits. If mitigation is required to bring Site into compliance at any time during the Lease, and so long as Lessor's operations are in compliance with all FCC rules, such mitigation measures shall be the sole responsibility of Lessee.

**27. INSPECTION AND RIGHT-OF-ENTRY:** Lessor and its agents shall have the right, but not the duty, to inspect the Site at any time to determine whether Lessee is complying with the terms of this Lease. This inspection shall include the right to take samples of soil, air and water on the Site.

**28. TERMS SURVIVING TERMINATION OF LEASE:** The obligations imposed on Lessor and Lessee and all provisions of this Lease which may reasonably be interpreted or construed as surviving the

completion or cancellation of the Lease, shall survive the completion, termination or cancellation of this Lease.

**29. SUBORDINATION:** The use of the Site by Lessee, any heirs, devisees, transferees, sublessees or assignees of Lessee shall be subordinate to that of the Lessor notwithstanding any other language set forth in this Lease.

Nothing herein shall be construed to limit or restrict Lessor's use and access to the Site.

**30. BENEFITS TO INURE:** The provision of this Lease shall inure to the benefit of and be binding upon Lessee and its successors and assigns, and shall inure to the benefit of and be binding upon the successors and assigns of Lessor.

**31. PROVISION UNENFORCEABLE:** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**32. DISPLAY OF SIGNS:** The display of any political signs within or on the Site is prohibited. Further, no signage shall be displayed within or on the Site without prior written approval from the City.

**33. SEVERABILITY:** Unless otherwise provided, or unless the context shall otherwise require, words importing the singular number shall include the plural number, words importing the masculine shall include the feminine gender, and vice versa.

**34. ENTIRE AGREEMENT:** This Lease represents the entire agreement between the parties and supersedes all other agreements and representations made prior hereto. No amendment hereof shall be binding on either party unless and until approved in writing by both parties.

**35. GOVERNING LAW AND VENUE:** This Lease shall be governed and construed in accordance with the laws of the State of Washington and venue shall be in Snohomish County, Washington.

**36. NO PRESUMPTION AGAINST DRAFTER:** Lessor and Lessee understand, agree and acknowledge that this Lease has been freely negotiated by both parties and that, in the event of any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

**37. CUMULATIVE REMEDIES:** No provision of this Lease shall preclude Lessor from pursuing any other remedies, in law or equity, for Lessee's failure to perform its obligations.

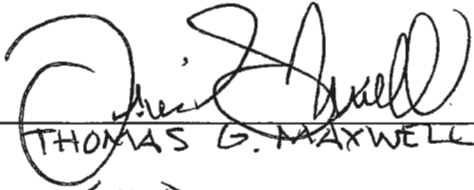
**38. CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of the Lease.

**39. AUTHORITY TO CONTRACT:** Each party represents and warrants to the other that: it has full right, power and authority to execute this Lease and has the power to grant all rights hereunder, its execution and performance of this Lease will not violate any laws, ordinances, covenants or the provisions



LESSEE:

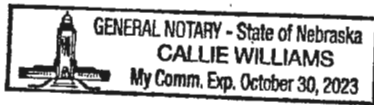
RCA TELECOM LLC

By:   
THOMAS G. MAXWELL  
Its: CEO

STATE OF Nebraska )  
 ) SS  
COUNTY OF Douglas )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me the undersigned, personally appeared \_\_\_\_\_  
Thomas G Maxwell, to me known to be the CEO of RCA TELECOM LLC,  
and acknowledged said instrument to be his / her free and voluntary act and deed, for the uses and  
purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year above written.



Notary: Callie Williams  
Print Name: Callie Williams  
Notary Public in and for the State of  
Residing at Omaha Nebraska  
My commission expires Oct 30 2023

**EXHIBIT "A"**

**A-1: LEGAL DESCRIPTION**

**Rucker Hill Site Legal Description:**

**That portion of the Northeast quarter of the Southwest quarter of Section 30, Township 29 North, Range 5 East, W.M., lying west of the Tulalip Avenue described as follows:**

**Beginning at the Southwest corner of said Northeast quarter of the Southwest quarter; thence North along the West line thereof to a point which lies 200 feet South of the North line thereof; thence East to a point which lies 275 feet West of the West line of Tulalip Avenue; thence North to the North line of said Northeast quarter of the Southwest quarter; thence East along said North line to the West line of Tulalip Avenue; thence South along said West line of the Northeast quarter of the Southwest quarter; thence West to the Point of Beginning;**

**TOGETHER WITH the South 515 feet of Government Lot 3 in said Section 30;**

**ALSO TOGETHER WITH that portion of Government Lot 4 in said Section 30 described as follows:**

**Beginning 1598.3 feet West of the intersection of the West line of Federal Street with the North line of the Southeast quarter of the Southwest quarter of said Section 30; thence West 860.3 feet more or less to the section line; thence South 524.87 feet; thence East 860.3 feet more or less; thence North 524.8 feet to the Point of Beginning;**

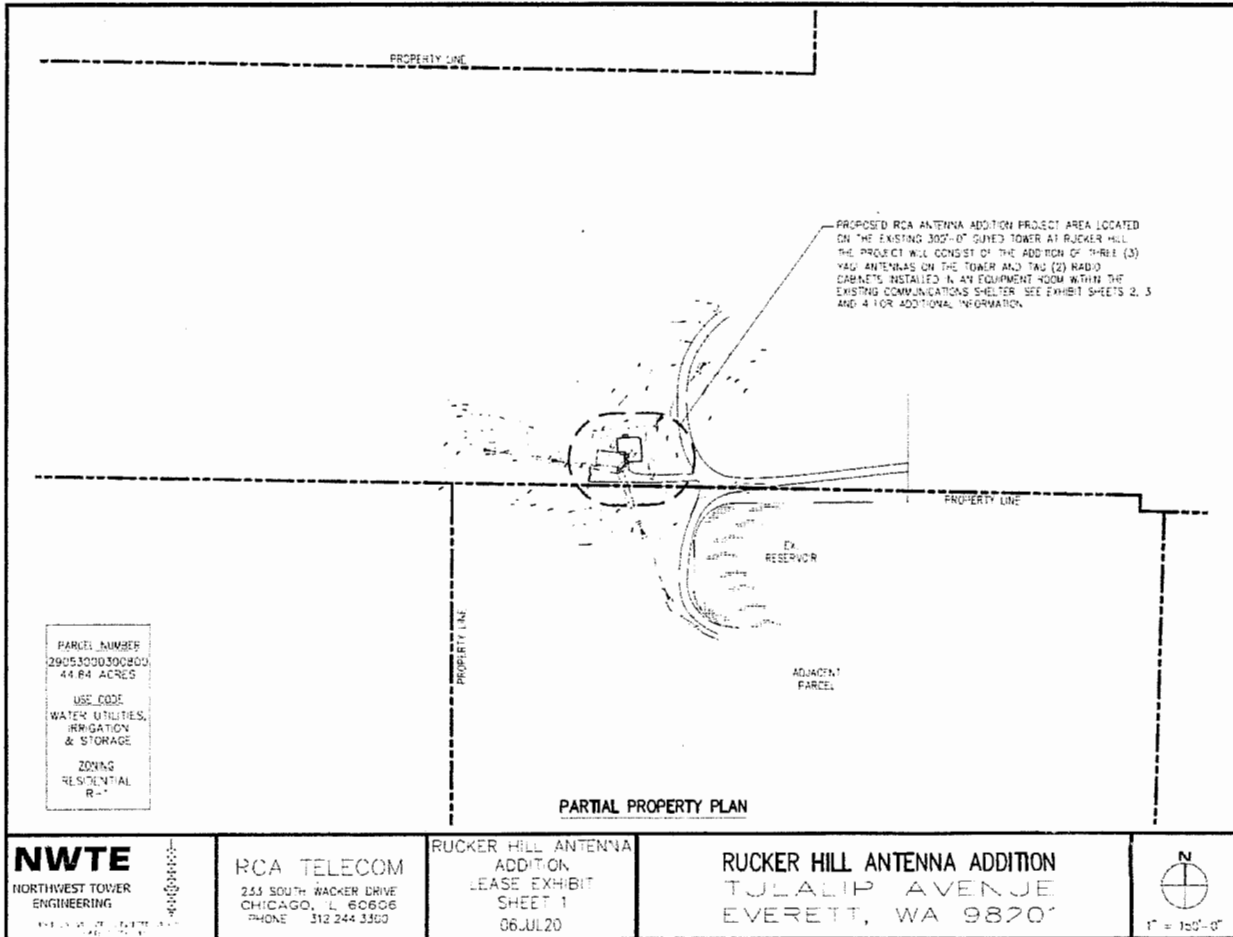
**ALSO TOGETHER WITH that portion of the Southeast quarter of the Southwest quarter of said Section 30 described as follows:**

**Beginning 417.0 feet West of the intersection of the West line of Federal Street with the North line of said Southeast quarter of the Southwest quarter; thence West 321.6 feet; thence South 20 feet; thence East 321.6 feet; thence North 20 feet to the Point of Beginning.**

**Subject to Easement for Road.**

**A-2: AREA MAPS AND SITE PLANS**

The attached sheets are included to provide graphic illustration of the lease area and site design.



PARCEL NUMBER  
29053000300800  
44.84 ACRES

USE CODE  
WATER, UTILITIES,  
IRRIGATION  
& STORAGE

ZONING  
RESIDENTIAL  
R-1

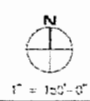
**PARTIAL PROPERTY PLAN**

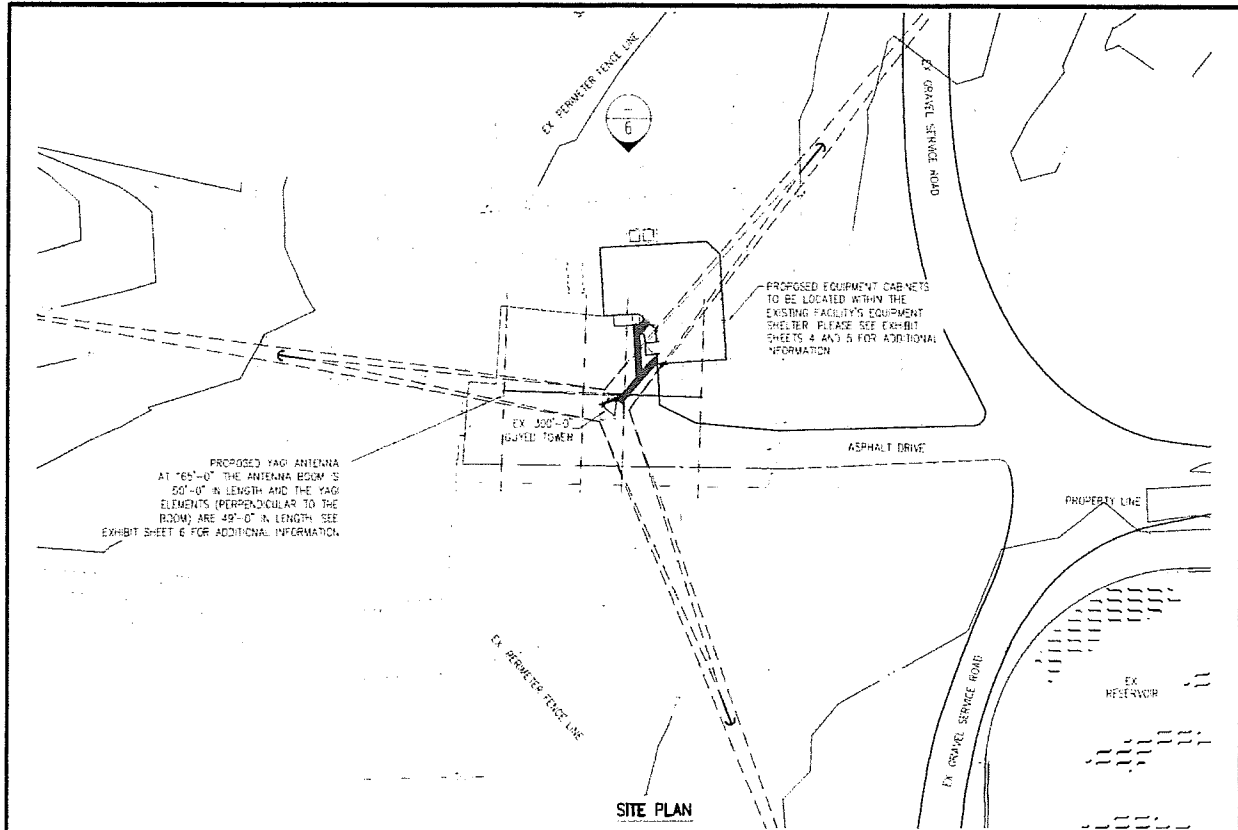
**NWTE**  
NORTHWEST TOWER  
ENGINEERING

**RCA TELECOM**  
254 SOUTH WACKER DRIVE  
CHICAGO, IL 60606  
PHONE 312.244.3300

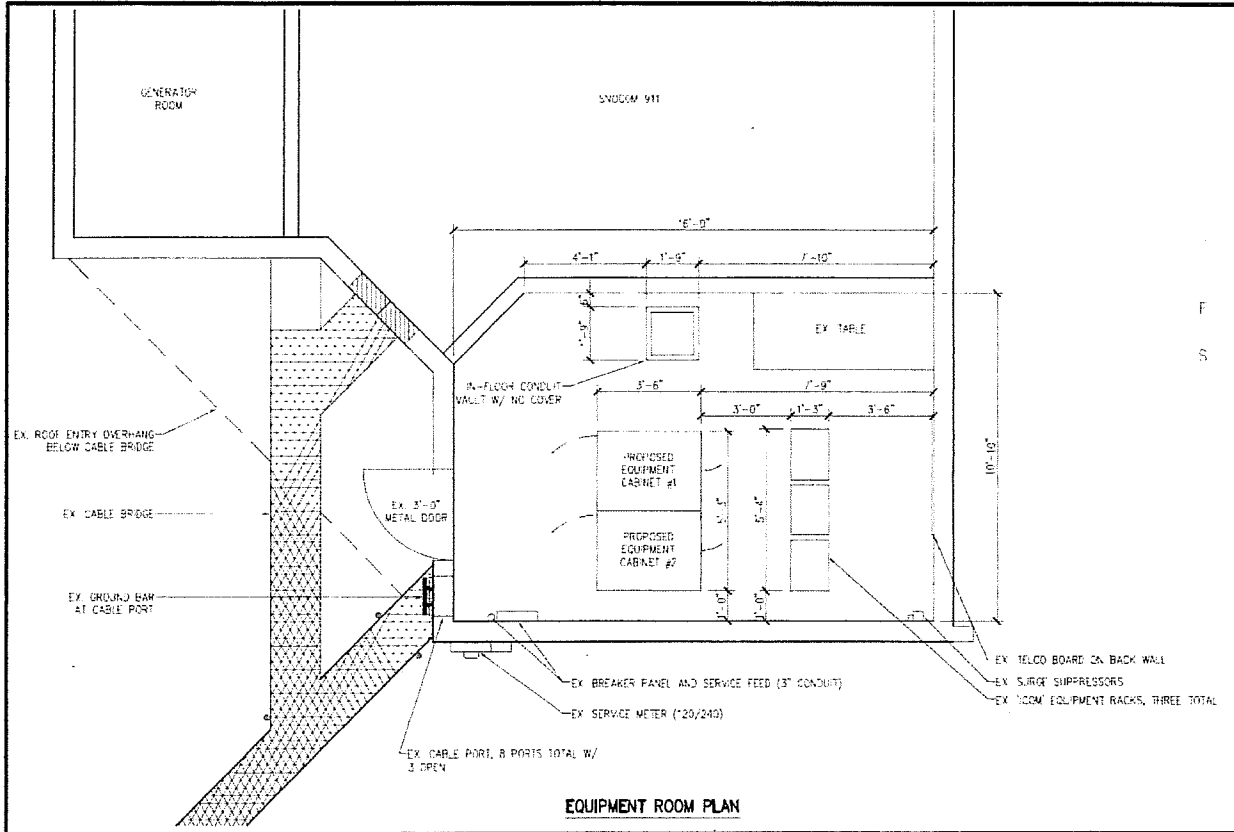
RUCKER HILL ANTENNA  
ADDITION  
LEASE EXHIBIT  
SHEET 1  
06.JUL.20

**RUCKER HILL ANTENNA ADDITION**  
TULALIP AVENUE  
EVERETT, WA 98201




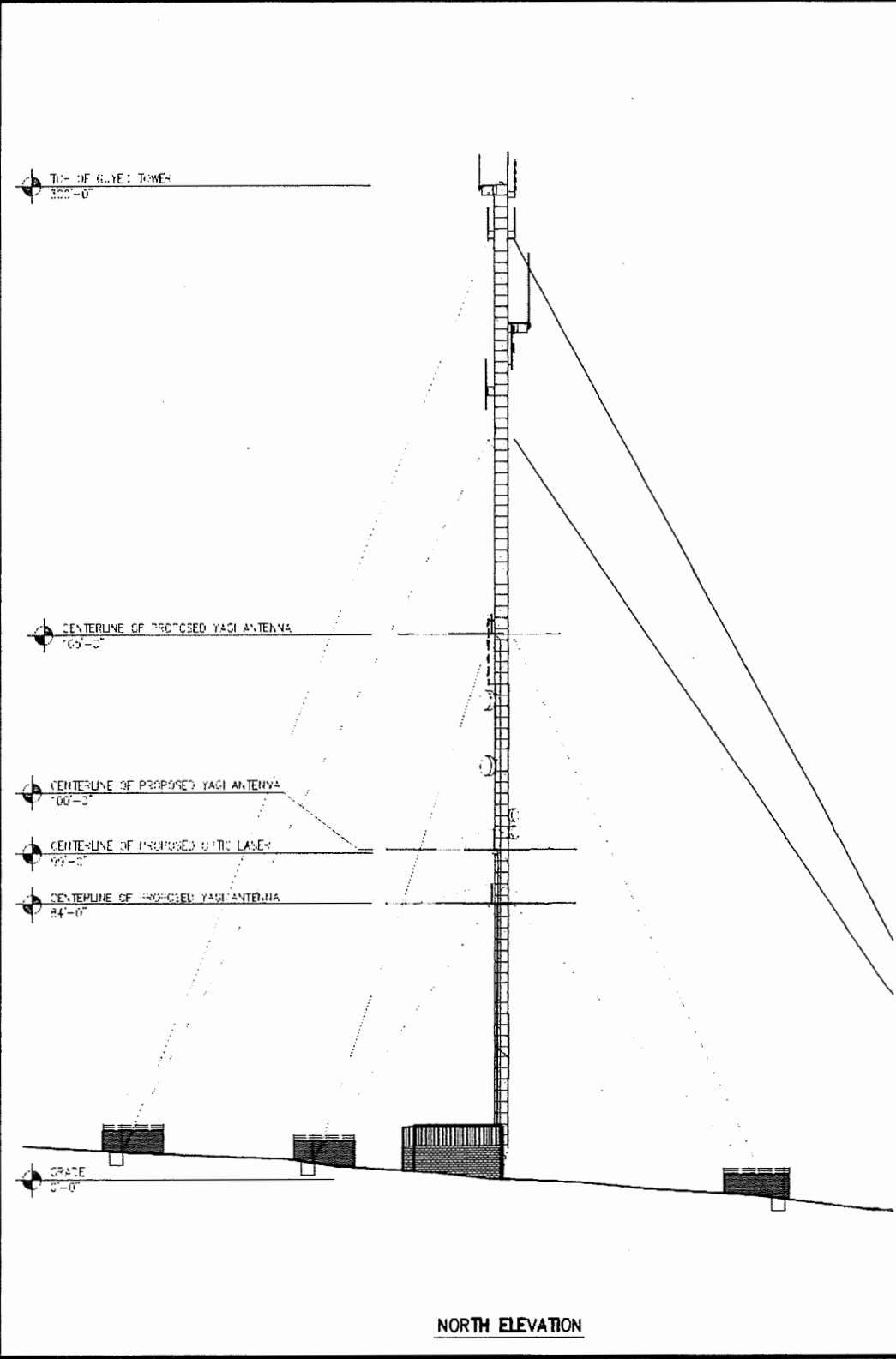


<p><b>NWTE</b> NORTHWEST TOWER ENGINEERING 4145 17th St Everett, WA 98201</p>	<p>RCA TELECOM 233 SOUTH WACKER DRIVE CHICAGO, IL 60606 PHONE 312.244.3300</p>	<p>RUCKER HILL ANTENNA ADDITION LEASE EXHIBIT SHEET 3 06.JUL.20</p>	<p>RUCKER HILL ANTENNA ADDITION TULALIP AVENUE EVERETT, WA 98201</p>	<p>N 1" = 30'-0"</p>
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**EQUIPMENT ROOM PLAN**

<p><b>NWTE</b> NORTHWEST TOWER ENGINEERING</p>	<p>RCA TELECOM 255 SOUTH WACKER DRIVE CHICAGO, ILL. 60606 PHONE 312.244.3300</p>	<p>RUCKER HILL ANTENNA ADDITION LEASE EXHIBIT SHEET 4 06.JUL.20</p>	<p>RUCKER HILL ANTENNA ADDITION TULALIP AVENUE EVERETT, WA 98201</p>	 <p>1/4" = 1'-0"</p>
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NORTH ELEVATION

1" = 40'-0"

RUCKER HILL ANTENNA ADDITION  
 TULALI AVENUE  
 EVERETT, WA 98201

RUCKER HILL ANTENNA  
 ADDITION  
 LEASE EXHIBIT  
 SHEET 6  
 95.1170

RCA TELECOV  
 313 SOUTH WACKER DRIVE  
 CHICAGO, IL 60605  
 PHONE 312 344 3300

**NWTE**  
 NORTHWEST TOWER  
 ENGINEERING  
 1000 N. WASHINGTON ST.  
 SUITE 100  
 CHICAGO, ILL. 60610  
 PHONE 312 344 3300