

**CITY OF OLYMPIA**  
**GROUND LEASE AGREEMENT**  
**Elliott Water Storage Tank**  
**3700 - 20<sup>th</sup> Avenue NW, Olympia, WA 98501**  
**Carrier: T-Mobile West LLC**  
**T-Mobile Site No. SE05025A**

WHEREAS, Olympia and Lessee acknowledge that a prior lease agreement "Communications Facilities Lease Agreement" dated October 1, 1998, was signed between the City of Olympia and US West Wireless, LLC. A Site Sublease Agreement was then signed between US West Wireless, LLC and Western PCS II Corporation, a predecessor of Lessee, under which certain equipment was installed on the ground and on the existing tower. The last lease payment for ground space used by Lessee was made in 2009, which covered 2003-2008, and was made under the Western PCS II Corporation sublease. Effective January 1, 2008, the City became entitled to rent for ground space and US West Wireless, LLC (now Crown Castle USA, Inc.) was entitled to rent for tower space only. The City now claims that back rent is due for the periods from 2009 to present; and

WHEREAS, Olympia and Lessee desire to enter into this Ground Lease Agreement to resolve all matters arising out of, or in any way connected with, or resulting from Lessee's use of the ground space, including any back rent and to enter into a lease based on the terms as set forth below.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

This non-exclusive Lease Agreement ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the **City of Olympia**, herein referred to as "Lessor", "Olympia" and **T-Mobile West LLC**, a Delaware limited liability company, herein referred to as "Lessee", subject to the following terms and conditions.

A. Property, Area, and Antenna Facilities

Olympia grants to Lessee the non-exclusive right to occupy a portion of the Elliott Avenue Water Storage Tank Site ("the Property"), the legal description for which is shown on the attached Exhibit A. This Legal Description is supplemented by Exhibit B, the Leased Area Map, depicting the "T-Mobile Leased Area" and "concrete pad," and Exhibit C, depicting the "Conduit Lease Area." The area leased to Lessee is limited to the concrete pad tank area and



Conduit Lease Area depicted on Exhibits A, B, C, and D, which is hereafter called the "Leased Area."

B. Permitted Use

1. Lessee's occupancy and use of the Leased Area is limited to its construction, maintenance, repairs, operation, and removal of Lessee's Equipment, described below, which has been authorized by a building permit from Olympia under Olympia Municipal Code (OMC) 16.04, and a use permit from Olympia under OMC 11.02.080, and reviewed in accordance with Chapters 18.44 or 18.46, where applicable. **All future construction and modification of equipment must comply with the City of Olympia Engineering Design and Development Standards pursuant to OMC Chapter 11.12.**

No removal of any of Lessee's Equipment which is attached to or inside any facilities of Olympia, such as, without limitation, water tanks, towers, structures, or buildings, may occur without giving Olympia thirty (30) days advance notice and an opportunity to determine whether the removal may damage any Olympia property. If Olympia determines that removal may damage City property, Olympia may prohibit the removal or require the Lessee to take measures to avoid damage. The same requirements apply to Lessee's Equipment located in any trenches that are jointly occupied by facilities of Olympia or any other company or person;

2. "Equipment" includes, but is not limited to, equipment installed on the Leased Area, and includes but is not limited to such items as switches, power supplies, batteries, equipment shelter, generator, generator shelter, accessories, and necessary appurtenances (see attached Exhibit D, Equipment). Said Equipment is Lessee's personal property and not fixtures, regardless of how it is attached to the Property. Any upgrade or other alteration to the Equipment that would result in an increase from the original leased square footage occupied by the Equipment on the Leased Area, as depicted in the Exhibits A, B and D is subject to review and approval by Olympia prior to installation, which approval may not be unreasonably withheld, delayed, or conditioned, and may be subject to an adjustment to the rent based on the pricing structure under Exhibit E, Pricing Structure, and the annual escalation under Section C. 2, Rent Adjustment, payable by Lessee hereunder;

3. Any other use of the Leased Area is a breach of this Lease. This Lease does not grant to Lessee any zoning or land use approvals for the uses mentioned herein. Lessee shall obtain any and all land use and zoning approvals as are necessary for its operations, including but not limited to, permits for buildings, structures, towers, and antennas. Olympia agrees, at no cost to Olympia, to cooperate (by signing as property owner for applications and/or permits that are required by governmental agencies) with Lessee in making application for and obtaining all licenses, permits, and any and all necessary approvals that may be required for Lessee's



intended use of the Area as provided in this Lease. Olympia grants Lessee reasonable access through the Property to the Leased Area twenty-four (24) hours a day, seven (7) days a week and for servicing utilities necessary to operate the Equipment; and

4. Lessee shall provide City with as-built drawings of the Equipment and improvements installed on the leased premises, which show the actual location of all Equipment within thirty (30) days of the Commencement Date of this Lease and within thirty (30) days of completion of any material alterations to the Equipment thereafter. Said drawings must be accompanied by a complete and detailed inventory of all Equipment actually placed on the Leased Area.

C. Compensation.

1. Rent.

Lessee shall pay rent ("Rent") to Olympia in the amount of Eleven Thousand Five Hundred Ninety-five and 27/100 Dollars (\$11,595.27) annually, the calculation for which is attached hereto as Exhibit E, Pricing Structure, commencing on the Commencement Date (as defined below). The Rent is due and payable annually on or before January 1<sup>st</sup> of each year, subject to the annual adjustment set forth in Section C.2, Rent Adjustment. Partial years at the beginning and end of the term of this Lease will be prorated. Lessee shall make payment to the Director of Finance and Budget at Olympia City Hall, 601 4<sup>th</sup> Avenue East Olympia, WA 98507, or as otherwise directed by Olympia.

Lessee shall make a lump sum back rent payment to Olympia within thirty (30) days from the lease execution date in the amount of Forty-eight Thousand Sixty-two and 11/100 Dollars (\$48,062.11) to cover the back rent from 2009 - 2017, Thirty Thousand Nine Hundred Forty and 33/100 Dollars (\$30,940.33) to cover the back rent from 2018 – 2020, Eleven Thousand One Hundred Forty-nine and 30/100 (\$11,149.30) to cover the back rent from 2021, Eleven Thousand Five Hundred Ninety-five and 27/100 (\$11,595.27) to cover the rent for 2022, and the total rent amount due is One Hundred One Thousand Seven Hundred Forty-six and 98/100 (\$101,746.98), which will be accepted in full satisfaction of amounts owed for unpaid rent accrued prior to the Commencement Date. Lessee shall make payment to the Director of Finance and Budget at Olympia City Hall, 601 4<sup>th</sup> Avenue East Olympia, WA 98507, or as otherwise directed by Olympia.

Rent amount is based on a) The Leased Area square footage, and b) The Utility, Electrical and Conduit Runs linear feet, which is shown on the attached Exhibit C, Conduit Lease Area. The rent amount is subject to proportionate increase if Lessee expands its occupancy beyond the Leased Area.

2. Rent Adjustment.



The annual Rent increases on January 1<sup>st</sup> of each year by an amount of four percent (4%) over the prior year's rent. Any increased rent for changes in the linear or square footage of the Leased Area, and/or Utility, Electrical and Conduit Runs must be reflected by amendments to the Exhibit E, Pricing Structure.

3. Late Charge.

In the event Lessee fails to make any payment of Rent or any other payment due hereunder within ten (10) business days of the due date, after notice to Lessee Olympia is entitled to a late fee from Lessee equal to ten percent (10%) of the past due amount. Acceptance of late rent payments or any other payments by Olympia from Lessee after any breach by Lessee does not constitute a waiver of any such breach or any other breach.

4. Leasehold Excise Tax.

In addition to such annual Rent, Lessee shall also pay to Olympia, to the Director of Finance and Budget as set forth above, leasehold excise taxes assessed pursuant to RCW 82.29A and OMC Chapter 3.36, if applicable. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment and Lessee's improvements made to the Property.

5. Billing.

Olympia shall send all payment inquiries to Lessee at the notice address in section K. Telephone number for property management is 877-373-0093.

6. Failure to Pay.

Any failure to pay Rent or any amount due in Section 3.A or 3.B, or any other amount to be paid by Lessee under the terms of this Lease, within thirty (30) days of Lessee's receipt of written notice that such amounts are past due is a breach of contract and entitles Olympia to pursue all remedies legally available, including the right to terminate this Lease. Acceptance of a late rent payment beyond the 10-day period referred to in part C. 3, does not waive the breach.

7. Assignment and Sublease.

No assignment, transfer, or sublease (except those approved pursuant to Section Q. 1) releases Lessee from Lessee's obligations under this Lease or alter the liability of Lessee to pay the Rent and perform all other obligations of Lessee hereunder. As a condition to Olympia's approval, any potential assignee otherwise approved by Olympia will be required to assume all obligations of Lessee under this Lease and will be jointly and severally liable with Lessee for the payment of Rent and performance of all terms and conditions of this Lease.



D. Disclaimer of Liability and Indemnity.

1. Olympia is not at any time liable for injury or damage occurring to any person or property from any cause whatsoever arising out of or in any way related to Lessee's construction, maintenance, repair, use, operation, or dismantling of the Leased Area or its Equipment, except to the extent that any such injury or damage arises out of the sole negligence, or any willful or intentional acts of Olympia, its employees or agents;

2. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, and employees, from any and all claims, lawsuits, actions, damages, or costs (including but not limited to reasonable attorneys' fees), or liability whatsoever which arises from Lessee's use of the Leased Area and Equipment. The foregoing obligation includes, but is not limited to, claims of radio, television, or microwave interference, antitrust violations and anticompetitive acts, liability due to falling objects such as antennas, attachments of equipment and lines on the Property, and liability due to any other condition of Lessee's equipment, facilities, or operations that arise out of Lessee's use and/or occupancy of the Leased Area and Equipment. This obligation survives expiration or termination of this Lease.

3. In the event that Lessee fails or refuses to accept Olympia's tender of any claim or lawsuit, said tender having been made subject to this Section D, and said refusal is subsequently determined by a court having jurisdiction to have been a wrongful refusal on the part of Lessee, then Lessee shall indemnify Olympia for all of Olympia's costs for defense of the action and all costs of recovering under this indemnification clause, including attorneys' fees, and any damages, liability, and/or settlements for which a reasonableness determination is made;

4. Lessee specifically and expressly waives any immunity that may exist under the Washington State Industrial Insurance Act, Title 51 RCW for claims against Olympia by Lessee's employees or other persons covered by the Industrial Insurance Act. Further, the indemnification obligation under this Lease is not limited by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under the workers' compensation acts, disability benefits acts, or other employee benefits acts. Lessee's duty to defend, indemnify and hold Olympia harmless include, as to all claims, demands, losses, and liabilities to which it applies, Olympia's personnel-related costs, reasonable attorneys' fees, court costs, and all other claim-related expenses.

THE PARTIES HERETO CERTIFY THAT THE WAIVER IN Section D. 4 ABOVE WAS MUTUALLY NEGOTIATED BY THE PARTIES.



5. Lessee is liable to Olympia for any damage or loss to Olympia's property resulting from the acts or omissions of Lessee's agents, employees, or representatives;

6. In the event any action or proceeding is brought against the City of Olympia or its agents, officers, or employees by reason of any matter for which Lessee is obligated to indemnify Olympia, Lessee shall, upon notice from Olympia, at Lessee's sole cost and expense, defend the same with legal counsel reasonably selected by Lessee; provided however, that Lessee shall not admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of Olympia without Olympia's prior written consent which will not be unreasonably withheld;

7. Each party shall give the other prompt notice of the making of any claim or the commencement of any action, suit, or other proceeding covered by this Section. Olympia shall cooperate with Lessee in the defense of any action subject to the defense, indemnification, and hold harmless provisions hereof, and may participate in the defense of any litigation with Olympia's own legal counsel;

8. Except for indemnification pursuant to this Section D, and Section L, neither party is liable to the other for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special, or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort, strict liability, or otherwise; and

9. Nothing in the preceding paragraphs of Section D may be construed to create any additional liability to any third party. Rather, the preceding provisions are solely for the purpose of allocating risk and liability between the parties to this Lease.

E. Insurance.

While this Lease is in effect or while any Equipment is located on the Leased Area, Lessee shall maintain in effect and pay for policies of insurance in accordance with OMC 11.10.220 as follows:

1. Commercial General Liability insurance must be at least as broad as ISO occurrence form CG 00 01, and must cover liability arising from premises, operations, products-completed operations, stop gap liability, personal injury, advertising injury, and liability assumed under an insurance contract. The City must be included as an additional insured under Lessee's Commercial General Liability insurance policy using ISO endorsement CG 20 26 or substitute endorsement providing at least as broad coverage. There may be no exclusion for liability arising from explosion, collapse, or



underground property damage, with limits not less than: \$2,000,000.00 per occurrence and \$2,000,000 general aggregate;

Excess or Umbrella Liability insurance must be excess over and at least as broad in coverage at Lessee's Commercial General Liability and Automobile Liability insurance. The City must be included as additional insured on Lessee's Excess or Umbrella Liability insurance policy. Excess or Umbrella insurance must be written with limits of not less than \$7,000,000 per occurrence and annual aggregate. The excess or Umbrella Liability requirement and limits may be satisfied through Lessee's Commercial General Liability and Automobile insurance, or any combination thereof that achieves the overall required limits;

Subcontractors Insurance. Lessee shall cause each and every Subcontractor of Lessee who performs work on the Leased Area to provide insurance coverage that complies with all applicable requirements of Lessee-provided insurance as set forth herein, except Lessee has sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. Lessee shall ensure that Olympia is an additional insured on each and every Subcontractor's Commercial General Liability insurance policy using an endorsement at least as broad as ISO CG 20 26

2. Business Automobile liability for owned, non-owned, and hired vehicles with a minimum combined limit of \$1,000,000.00 for each accident;
3. Worker's compensation coverage as required by the industrial insurance laws of the State of Washington;
4. Lessee shall maintain the liability insurance policies required by this Section throughout the term of the Lease, and such other period of time during which Lessee is operating without lease or authorization hereunder or is engaged in the removal of its telecommunications facilities;
5. Lessee shall provide insurance certificates, together with an endorsement including Olympia, and its elected and appointed officers, officials, agents, employees, representatives, and volunteers as additional insureds, to Olympia prior to the commencement of any work or installation of any Equipment pursuant to this Lease. Any deductibles or self-insured retentions must be commercially reasonable for the telecommunications industry. Payment of deductibles and self-insured retentions is the sole responsibility of Lessee. The insurance policies required by this Section must



contain a clause stating that coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Lessee's insurance must be primary insurance, with respect to the negligent acts or willful misconduct of Lessee, as applied to Olympia, its officers, officials, employees, agents, and volunteers. Any insurance maintained by Olympia, its officers, officials, employees, agents, and volunteers in excess of Lessee's insurance and does not contribute with it;

6. In addition to the coverage requirements set forth in this Section, each such insurance policy must contain the following provision:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the City of Olympia, of a written notice addressed to the City Contract Manager of such intent to cancel or not to renew;"

7. Within fifteen (15) days after receipt by Olympia of any notice of cancellation or non-renewal, and in no event later than five (5) days prior to said cancellation or intent non-renewal Lessee shall obtain and furnish to Olympia replacement insurance certificates meeting the requirements of this Section;

Olympia and its agents, officers and employees must be included as additional insureds under such policies.

Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that coverage may not be cancelled without thirty (30) days written notice to Olympia. Lessee shall provide Olympia any required certificates of insurance to the email in the Notice section for Olympia.

F. Security.

1. Pursuant to OMC 11.10.250, Lessee shall obtain a performance bond (the "fund") for the benefit of Olympia in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00), or such lesser amount as deemed necessary by Olympia's Community Planning and Development Director, which fund Lessee shall maintain at its sole expense so long as any of Lessee's Equipment is located upon the Leased Area;



2. The fund serves as security for the full and complete performance of this Lease, including any costs, expenses, damages, or loss Olympia pays or incurs, including civil penalties, because of any failure attributable to Lessee to comply with this Lease or the codes, ordinances, rules, regulations, or permits of Olympia;

3. Before any sums are withdrawn from the fund, Olympia shall give thirty (30) days written notice to Lessee:

a. Describing the default to be remedied, or the damages, costs or expenses, which Olympia has incurred by reason of Lessee's default;

b. Providing a reasonable opportunity for Lessee to first remedy the existing or ongoing default, if applicable;

c. Providing a reasonable opportunity for Lessee to pay any monies due Olympia before Olympia withdraws the amount thereof from the fund, if applicable; and

d. That Lessee will be given an opportunity to review the default described in the notice with Olympia's representative or designee; and

4. Lessees shall replenish the security fund within fourteen (14) days after written notice from Olympia that there is a deficiency in the amount of the fund.

G. Term and Renewal.

The term of this Lease is approximately five (5) years, commencing on the date this Lease is fully executed by both parties (which is the "Commencement Date"). In the event Lessee wishes to extend this Lease at the end of the initial term, Lessee shall give notice to Olympia at least one hundred eighty (180) days before expiration of the then current initial term. The decision to extend this Lease is within the sole but reasonable discretion of Olympia, in accordance with the terms of Olympia Municipal Code 11.08.060. Notwithstanding anything stated herein to the contrary, Lessee may not extend the term this Lease unless it is in full compliance with all terms and conditions of this Lease. Unless Lessee wishes to extend this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

H. Amendment.

All amendments to this Lease must be in writing and signed by the authorized representative for both parties, dated, and filed with each party prior to taking effect.

I. Breach.



1. In the event Lessee violates any term or condition of this Lease, Olympia may give notice in writing to Lessee to cease the violation and comply with the terms of this Lease. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of such written notice, Olympia may terminate this Lease and reenter the Leased Area upon prior written notice to Lessee. Olympia's failure to use remedies provided herein is not a waiver by Olympia; and

2. In the event there is a breach by Olympia with respect to any of the provisions of this Lease or Olympia's obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia has thirty (30) days in which to cure the breach. If Olympia fails to cure the breach within the cure period set forth herein above, Lessee has the right to all remedies available to it at law and in equity, including but not limited to the right to terminate this Lease upon written notice thereof to Olympia. Lessee's failure to use remedies provided herein is not a waiver by Lessee. Lessee may not maintain any action or effect any remedies for default against Olympia unless and until Olympia has failed to cure the breach within the time periods provided in this Section.

J. Condition of Property upon Termination.

Subject to Sections L and N, upon termination of this Lease, Lessee shall return the Leased Area to Olympia in good, undamaged, useable condition, normal wear and tear and casualty excepted, and shall remove all above-ground Equipment from the Leased Area within thirty (30) days after the effective termination date. Lessee is liable to Olympia for any unpaid annual Rent as of the date of termination of this Lease.

K. Notice.

Any notice required to be given under this Lease must be deemed given three (3) days after deposit of such notice(s), properly addressed, in the United States mail, postage prepaid, sent by registered or certified mail, return receipt requested, or by a nationally recognized courier service.

TO LESSOR:                   **CITY OF OLYMPIA**  
                                  ATTN: Public Works Department  
                                  601 4<sup>th</sup> Avenue East  
                                  Olympia, WA 98507-1967

TO LESSEE:                   **T-MOBILE USA, Inc.**  
                                  Attn: Lease Compliance /SE05025A  
                                  12920 SE 38th St  
                                  Bellevue, WA 98006



Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

L. Alteration.

Lessee shall not make any alterations, additions, or improvements in the Leased Area, which are not within the usual and customary method of installation of its Equipment, without first obtaining the consent of Olympia in writing, which consent may not be unreasonably withheld, conditioned, or delayed. All alterations, additions, and improvements to the Leased Area must be at the sole cost and expense of Lessee and become the property of Olympia, excluding Lessee's Equipment, and be surrendered with the Property as a part thereof at the expiration or termination of this Lease, without disturbance, molestation, or injury, including but not limited to all foundations and utilities. At Olympia's direction, Lessee shall remove all above-ground alterations, additions, and improvements, and Equipment within ninety (90) days after the expiration or termination of this Lease and Lessee's receipt of Olympia's written request to remove such improvements.

M. Cooperation

Olympia shall cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Equipment.

If Lessee performs work on the Leased Area with the consent of Olympia, Lessee shall comply with all applicable laws, ordinances, rules, regulations, and Engineering Design and Development Standards of the City of Olympia and any other authorized applicable governmental authority.

Lessee has the right to alter, replace, enhance, and upgrade the Equipment at the Leased Area at any time during the term of this Lease with equipment that is of similar or smaller size in share or number, upon prior written notice to Olympia; provided, however that such changes may not cause measurable interference with existing facilities or operations at the Property. Other alterations, including but not limited to an increase in the height of the Equipment, increase in the use of ground space on the Leased Area, or the substitution of substantially larger equipment may be made only upon approval by Olympia, with such approval not to be unreasonably withheld, conditioned, or delayed.

N. Ownership and Removal of Improvements.

All foundations, utilities, landscaping, and all other improvements, including fixtures, except Lessee's Equipment, become the property of Olympia upon expiration or termination of this Lease. In the event that Olympia requires removal of such above-ground improvements and



restoration upon the expiration or earlier termination of this Lease, Lessee shall, within ninety (90) days after the termination of this Lease and Lessee's receipt of written notice from Olympia requiring removal of the improvements, accomplish such removal and restoration at its sole expense. In the event Equipment is left upon the Leased Area after expiration or termination of this Lease, it becomes the property of Olympia if not removed by Lessee upon thirty (30) days written notice from Olympia. If such time for removal causes Lessee to remain on the Leased Area at the termination of this Agreement, Lessee shall pay rent at the then existing monthly rate or on the existing monthly prorate basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures, and all personal property are completed.

O. Interference with Other Users.

1. Olympia acknowledges, for purposes of this Section O, that Lessee has leased the Leased Area and has been operating its Equipment thereon since February 1999. Olympia has previously (prior to February 1999) entered into leases with other tenants for their equipment and antennae facilities ("pre-existing tenants") on the Property. Lessee acknowledges that Olympia is also leasing the Property to other tenants for the purposes of transmitting and receiving telecommunication signals. The City, however, is not in any way responsible or liable for any interference with Lessee's use of the Leased Area that may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with Lessee's use of the Leased area, and Olympia and Lessee cannot work out this interference with the other tenants using commercially reasonable efforts, Lessee may seek injunctive relief against the interferer or, upon written notice to Olympia, terminate this Lease and restore the Leased Area in accordance with the terms of Sections J, L, and N above. The City and Lessee shall cooperate with all other tenants to identify the causes of and work towards the resolution of any electronic or radio frequency interference problems. In addition, Lessee shall eliminate any radio or television interference caused to Olympia-owned facilities or surrounding residences at Lessee's own expense and without installation of extra filters on Olympia-owned equipment. Further, Lessee shall, prior to the Commencement Date of this Lease, accept such interference as may be received from Olympia-owned and operated telecommunications or other facilities located upon Olympia's Property;

2. The Equipment that Lessee maintains or installs on the Leased Area must be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently (as of the Commencement Date of this Lease) licensed and operating communications equipment of Olympia, or other pre-existing tenants on the Property. In the event Lessee's Equipment causes such interference, Lessee shall take all reasonable steps necessary to correct and eliminate the interference. Lessee shall



eliminate any radio or television interference caused to Olympia owned and operated facilities located on the Property prior to the Commencement Date of this Lease at Lessee's sole expense and without installation of extra filters on Olympia-owned equipment.

3. Lessee's installation, operation, and maintenance of its Equipment may not damage or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities of Olympia's owned and operated facilities located at the Property, or with such operations of other tenants at the Property. Lessee shall cease all actions which interfere with such operations of Olympia immediately upon notice of such interference; and

4. Olympia does not guarantee to Lessee subsequent noninterference with Lessee's Equipment operations; provided, however, that in the event any other party, except a governmental unit, office, or agency, requests a lease and/or permission to place any type of additional antenna or transmission facility on the Property, Olympia shall follow the procedures of this section to determine whether such antenna or transmission facility will interfere with Lessee's Equipment operations. If Olympia receives any such request, the prospective tenant which may cause interference must take steps to eliminate such interference, as reflected in technical specifications submitted to Olympia for review. The prospective tenant is responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee has thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objections within said thirty (30) day period will be deemed consent by Lessee to the installation of antennas or transmission facilities pursuant to said proposal. If Lessee gives notice of objection due to interference during such thirty (30) day period and Lessee's objections are verified by Olympia to be valid, then Olympia shall not proceed with such proposal unless the prospective tenant modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may allow the prospective tenant to proceed and place antennas or other communications facilities on the Property regardless of potential or actual interference with Lessee's use, provided however, if Lessee's use of the Leased Area is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.

P. Hazardous Substances.

Olympia represents that it has no knowledge of any substance, chemical, or waste (hereafter called "Hazardous Substance") on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee shall not introduce any Hazardous Substance on the Property in violation of any applicable law. Lessee shall use the Property in compliance with all applicable state and federal environmental laws. Lessee is solely responsible for and shall defend, indemnify, and hold Olympia, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including



reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Property associated with the introduction by Lessee to the Property of any Hazardous Substance(s). Olympia is solely responsible for and will defend, indemnify, and hold Lessee, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup, or restoration of the Property with respect to Hazardous Substances from any and all sources other than those Hazardous Substances introduced to the Property by Lessee. The obligations of this Section P survive the expiration or termination of this Lease.

Q. Assignment; Sublease.

1. Lessee shall not assign or transfer this Lease or sublease all or any portion of the Leased Area either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation; nor may title thereto, either legal or equitable, or any right or property interest therein pass to or vest in any entity without the prior written consent of Olympia, which consent may not be unreasonably withheld, conditioned, or delayed; Lessee shall promptly notify Olympia of any proposed change in, or transfer of, or acquisition by any other party of control of Lessee. Upon any such assignment, transfer, or sublease, Olympia may cancel this Lease, or may consent thereto and continue this Lease with the assignee, transferee, or sublessee.

2. Notwithstanding anything contained herein to the contrary, this Lease may be sold, assigned, or transferred by Lessee without approval or consent of Olympia to Lessee's, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Lessee's assets in the market, defined by the Federal Communications Commission in which the Property is located, by reason of a merger, acquisition, or other business reorganization. Lessee shall notify Olympia within sixty days (60) after the conclusion of such a transfer. No change of stock ownership, partnership interest, or control of Lessee or transfer upon partnership or corporate dissolution of Lessee constitutes an assignment hereunder.

3. As a condition to Olympia's approval, any potential assignee otherwise approved by Olympia will be required to assume all obligations of Lessee under this Lease and will be required to be jointly and severally liable with Lessee for the payment of Rent and performance of all terms and conditions of this Lease.

R. Venue.

Any lawsuit arising out of our relating to this Lease must be brought and maintained in the Superior Court in Thurston County, Washington, which is the exclusive venue for any such



lawsuit. This Lease is governed by and must be interpreted in accordance with Washington law. The prevailing party in any lawsuit arising out of or related to this Lease is entitled to an award of costs and reasonable attorney's fees.

S. Liens.

By law, no lien may attach to public property. If Lessee has work performed on the Property, Lessee shall inform all of its contractors, subcontractors, suppliers, materialmen, laborers, and others who may have a lien against private property that they are prohibited from claiming a lien on Olympia property.

T. Termination.

In addition to termination for breach under Section I above, Olympia may terminate this Lease after giving written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination; provided there is a bona fide threat of public health or safety caused or contributed to by Lessee's continued use of the Leased Area (as permitted in this Lease), or if Olympia reasonably concludes that Lessee's use of the Leased Area conflicts with the primary purpose of the Property: Olympia's delivery of safe drinking water and fire suppression water. Lessee may terminate this Lease with six (6) months written notice for any reason. Such termination is permitted in the event Lessee wishes to terminate this Lease at any time for any reason.

U. Right of Entry.

Olympia, and its agents, officers, and employees, may enter the Leased Area upon twenty-four (24) hours prior written notice to Lessee for the purpose of conducting inspection for compliance with this Lease or to conduct other business; provided, however, that in no event may Olympia modify, remove, relocate, or otherwise tamper with the Equipment. In the event of an emergency, Olympia's agents, officers, and employees may enter the Leased Area without notice to Lessee. Olympia is liable for any damage to the Equipment negligently caused by Olympia or its agents, officers, and employees. In an emergency Olympia shall call Lessee's NOC at 877-611-5868.

V. Whole Agreement.

This Lease contains the entire agreement between the parties as to the transaction contained herein, and supersedes all offers, negotiations, and agreements concerning the subject matter contained herein. Both parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

W. Maintenance and Security.



1. Olympia shall maintain the Property (except for the Equipment and those parts of the Leased Area that Lessee has exclusive use and control of), including the water tank and access to the Leased Area, in good repair during the term of this Lease. Olympia has no responsibility for maintenance of or security for the Equipment placed upon the Leased Area by Lessee;
2. Lessee may install private utilities, at Lessee's expense, and may improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Lessee shall install separate meters for utilities it uses on the Property;
3. Lessee shall, at its own expense, maintain those parts of the Leased Area Lessee has exclusive use and control of and its Equipment in a safe condition, in good repair and in a manner reasonably acceptable to Olympia. Additionally, Lessee shall keep those parts of the Leased Area it has exclusive use and control of free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any excessive vibration, heat, or noise. Lessee's Equipment must, at all times, be painted, at Lessee's expense, the same color as the water storage tank or facility to which its Equipment, such as but not limited to conduit, wires, signs, etc., are attached, or other color as Olympia may specify. Lessee shall obtain permission from Olympia for any tree pruning or cutting that Lessee deems is reasonably required for installation and/or maintenance of its Equipment on the Leased Area, and Lessee shall in performing such pruning or cutting follow best management practices in accordance with Olympia Municipal Code;
4. In the event that Olympia desires to make water tank repairs, or conduct maintenance or painting of the Property, Olympia shall provide thirty (30) days written notice to Lessee. Lessee shall accommodate Olympia by taking whatever action is necessary to secure the Equipment of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and perform such maintenance. Olympia will use its best efforts to speedily take care of any work that requires Lessee to remove or otherwise disable its Equipment. If Lessee is required to temporarily remove all or any of its Equipment or disable its operations to accommodate Olympia's repair or maintenance work, Olympia shall permit Lessee to place and operate temporary transmission and reception facilities on the Property in a mutually acceptable location until such time as Lessee is able to relocate its Equipment back to the Leased Area and/or recommence operations therefrom. Use and operation of such temporary facilities is governed by all of the terms and conditions of this Lease, including Rent. If Lessee must discontinue its operation at the site while Olympia is doing its maintenance, repair, or painting, the Rent is abated until Lessee's use of the Leased Area and right to operate its Equipment therefrom is restored, unless Lessee places and operates temporary transmission and reception facilities on the Property; and



5. Upon Olympia's request, Lessee shall attend an annual site visit to discuss the general conditions of the Leased Area. If a site visit is requested, the parties will determine a mutually agreed upon date and time.

6. Lessee and any sub-lessee shall post at a conspicuous location on the the Leased Area a 24-hour emergency phone number.

X. Warranty of Title and Quiet Enjoyment.

Olympia warrants that: (i) Olympia owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances, and restrictions affecting Lessee's use; (ii) Olympia has full right to make and perform this Lease; and (iii) Olympia covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants, and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Property subject to this Lease. If Olympia sells or transfers all or any portion of the Property affecting the Property, any such sale, hypothecation, or transfer of all or any portion of the Property is made subject to the terms, provisions, and conditions of this Lease.

Y. Holding Over.

Any holding over after the expiration of the term of this Lease, with the consent of Olympia, must be construed to be a tenancy from month to month at two times the Rent or two hundred percent (200%) herein specified (prorated for partial months) and is otherwise on the terms and conditions herein specified, so far as applicable.

Z. Acceptance of Leased Area.

Lessee is currently in possession of the Leased Area and has been since June 1, 2002; Lessee accepts the Leased Area in the condition existing as of the date of this Lease. Except as provided elsewhere in this Lease, Olympia makes no representation or warranty with respect to the Leased Area's fitness for Lessee's particular purpose. Lessee shall, upon not less than forty-five (45) days prior request by Olympia, deliver to Olympia an estoppel statement in writing certifying that (a) this Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications); (b) the dates to which Rent and other charges have been paid; (c) so far as the person making the certificate knows, Olympia is not in default under any provisions of the Lease; and (d) such other factual matters as Olympia may reasonably request.

AA. Successors and Assigns.



This Lease is binding upon and inures to the benefit of the parties, their respective successors, personal representatives, and assigns.

**BB. Non-Waiver.**

Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Lease or to exercise any of their respective rights hereunder does not waive such rights, but such party may enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease may not be deemed a waiver of such breach unless expressly set forth in writing.

**CC. Miscellaneous.**

1. Olympia, and Lessee represent that each, respectively, has full right, power, and authority to execute this Lease.
2. If any term of this Lease is found to be void or invalid, such invalidity does not affect the remaining terms of this Lease, which continue in full force and effect;
3. Over the term of the Lease, Lessee shall give reasonable consideration to adopting, installing, and using new technologies on the Property which would reduce the footprint, height, width, and/or area occupied by its equipment; and
4. The Property houses critical structures and infrastructure necessary for the delivery of safe drinking water and fire suppression water. Any risks to such purposes associated with the installation and operation of Lessee's Equipment on or around the infrastructure must be minimized. The City's ability to operate and maintain its infrastructure must not be impeded or compromised in any way. In the event Lessee's use of the Leased Area conflicts with these purposes, Olympia may terminate this Lease at any time pursuant to Section T, above.

[SIGNATURES ON FOLLOWING PAGES]



Approved as to form:

Michael M. Young

Deputy City Attorney

LESSOR:

CITY OF OLYMPIA

By: \_\_\_\_\_

Name: Steven J Burney

Title: City Manager

Date: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, before me personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ for \_\_\_\_\_, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

Print Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.



LESSEE:

T-MOBILE West LLC  
a Delaware limited liability company

By:

\_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_

Name: Eamon O'Leary  
Sr Area Director

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

Date: 6.29.22



TMO Signatory Level : L06

STATE OF WASHINGTON )

King ) ss.

COUNTY OF ~~King~~ )

On this 29 day of JUNE 2022, before me personally appeared eamon o'leary to me known to be the Sr-Area Director for T-Mobile, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

Print Name: LINDA TRINH

NOTARY PUBLIC in and for the State of

WA, residing at King.

My commission expires 10/11/24.





**EXHIBIT A**  
**ELLIOTT AVENUE WATER STORAGE TANK LEASE SITE**  
**Leased Area Legal Description**

**Section 09 Township 18 Range 2W Quarter NW NW  
& SW NW BLA993119OL TR A Document 3321816**



**EXHIBIT "A"**  
**T-MOBILE LEASE SITE**

A 12 foot by 18 foot area (Elliot Tank Site) described as follows:

**Overall Water Tank Parcel**

The North 850 feet of the South 910 feet of that part of Government Lot 5 and the Northwest quarter of the Northwest quarter of Section 9, Township 18 North, Range 2 West, W.M., lying westerly of a line described by beginning at a point on the South line of said Lot 5, 270 feet East of its Southwest corner; running thence North 910 feet to the terminus of said line.

**T-MOBILE LEASE AREA**

**COMMENCING** at a ½" Iron Pipe with Cap encased in PVC pipe, marking the Northwest Corner of Section 9, Township 18 North, Range 2 West, W.M; thence along the West line of the Northwest Quarter of said Section 9, South 2°14'47" West, a distance of 2659.33 feet to a 3" Brass Disc, stamped LS 16716, marking the West Quarter-Corner of said Section 9; Thence North 9°53'03" East, a distance of 1091.60 feet to the Southwest Corner of lease area and the **POINT OF BEGINNING**. Said **POINT OF BEGINNING** bears South 3°00'31" East, a distance of 1584.07 feet from said Northwest Section corner:

Thence South 83°26'32" East, a distance of 12.00 feet;

Thence North 6°23'38" East, a distance of 18.00 feet;

Thence North 83°26'32" West, a distance of 12.00 feet;

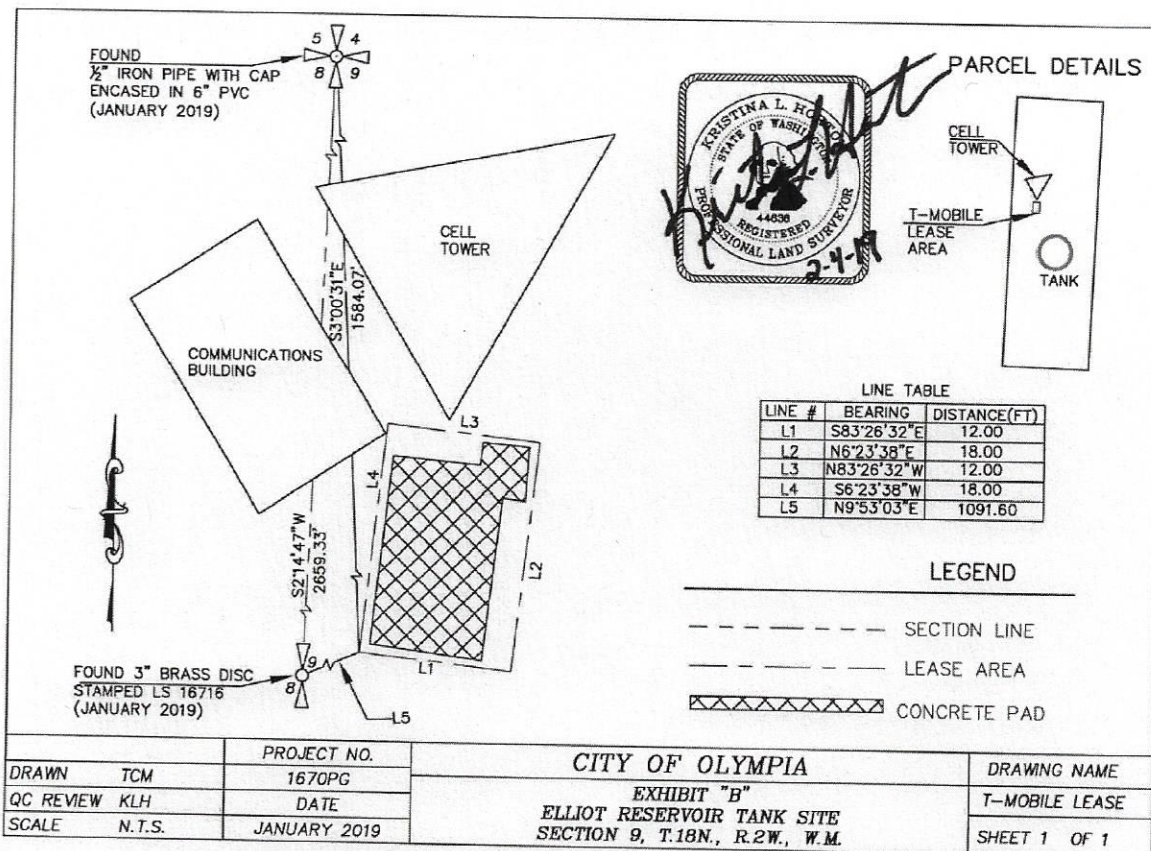
Thence South 6°23'38" West, a distance of 18.00 feet to the **POINT OF BEGINNING**;

Said Lease Area contains 216 square feet.



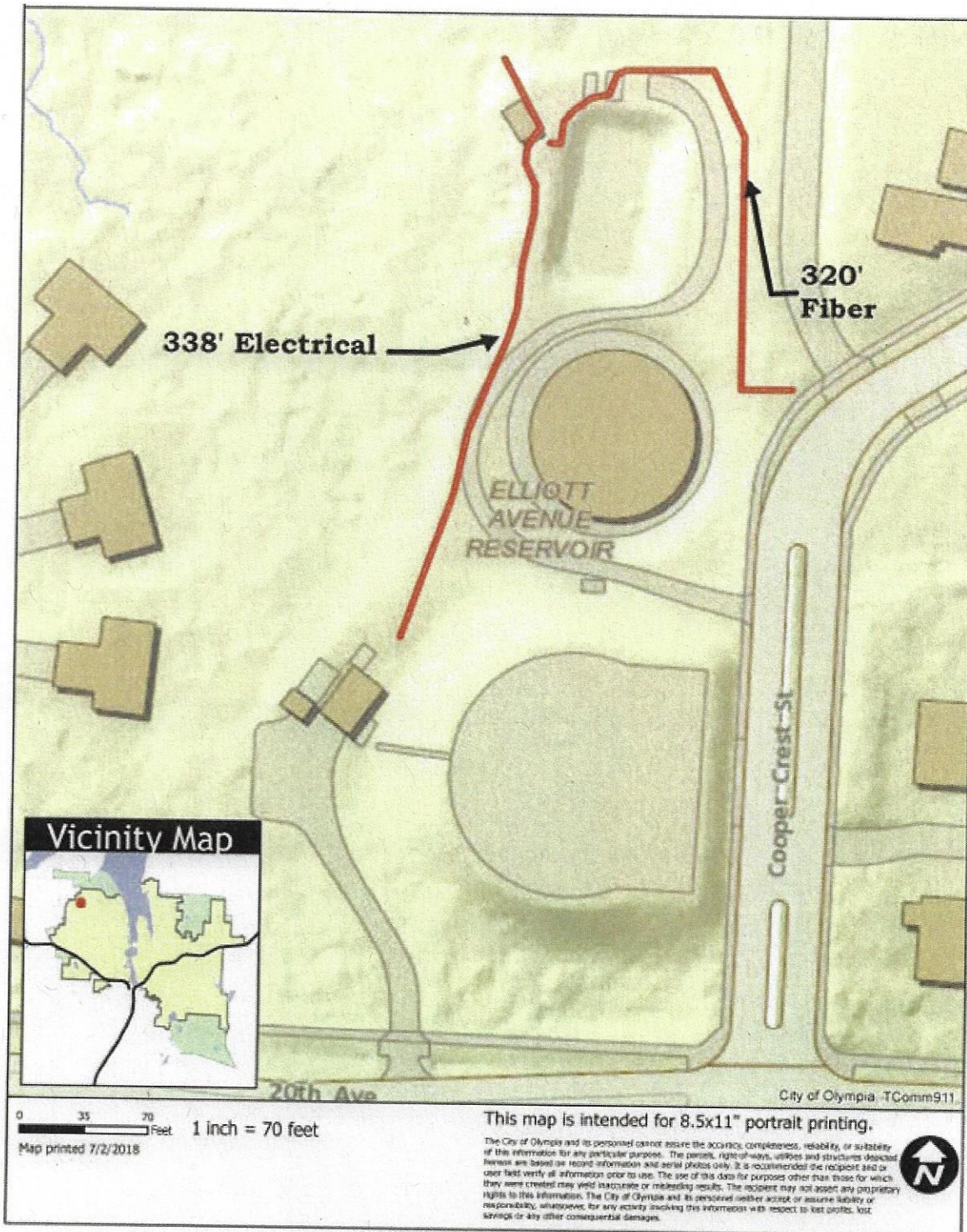


## EXHIBIT B ELLIOTT AVENUE WATER STORAGE TANK LEASE SITE Lease Area Map





### EXHIBIT C CONDUIT LEASE AREAS



**EXHIBIT D**  
**EQUIPMENT**

<b>Ground Space and Equipment</b>		
<b>Ground facility description and size (concrete pad with fencing and gate, building, etc.)</b>	<b>List equipment (Generator, control box, etc.)</b>	<b>Others</b>
216 SF Lease area. No Fencing. Outdoor equipment cabinets.	Outdoor equipment cabinets and ancillary support equipment	



**EXHIBIT E**

**PRICING STRUCTURE**

(Insert rent list: # of antenna, ground space square footage, etc.)

<b>Ground Facility and Equipment</b>			
Ground Facility (SF)	Unit Cost per SF	List equipment (Generator, control box, etc.)	Ground Facility Rent
216 SF (12) x (18)	\$31.73		\$6,854.33

<b>Utility, Electrical and Conduit Runs</b>		
Quantity (LF)	Cost per LF	Utility Easement Rent
658	\$7.20	\$4,740.94

**Total Rent Amount: \$11,595.27**