

## **ATTACHMENT 1**

### **Lease Agreements for the following locations:**

1. Elliott Street Reservoir,
2. Log Cabin Road /Boulevard Road Reservoir,
3. Birch Street/Bush Street Reservoir,
4. Fir Street/Eastside Street Reservoir, and
5. Hoffman Road Reservoir

## LEASE AGREEMENT

3700 Elliot Ave NW  
Olympia, Washington 98502  
SE05025A / Elliot

This Lease Agreement (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Olympia, Lessor, ("Olympia"), and T-Mobile West Corporation, a Delaware corporation, (“Lessee”).

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Property, Area, and Antenna Facilities

Olympia hereby grants a nonexclusive lease to Lessee for property located on the following described property situated in Thurston County, State of Washington, with:

The north 850 feet of the south 910 feet of that part of the 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.

Which shall hereafter be called “the Property.” Provided, however, that Lessee’s use shall be limited as shown on the attached Exhibit A, which shall hereafter be called “the Area.”

2. Permitted Use

a. The use of the Area shall be limited to construction, maintenance, repairs, and operation of an electronic equipment shelter and associated equipment on the Property, and wireless antennas, attachments, and cables "Antenna Facilities" used by Lessee. Said items shall be considered equipment and shall be referred to as “Equipment” hereafter. Any other use of said Area shall cancel this Lease.

b. 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 all 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 Area twenty-four (24) hours a day, seven (7) days a week and for utilities necessary to operate the Equipment.

### 3. Compensation.

Beginning September 1, 2012, Lessee shall pay rent ("Rent") to Olympia in the sum of Seventeen Thousand Five Hundred and No/100 Dollars (\$17,500.00) annually, or One Thousand Four Hundred and Fifty Eight and No/100 Dollars (\$1,458.00) per month ("Annual Rent"). Notwithstanding the foregoing, Olympia acknowledges that the previous Lease Agreement executed on May 20, 2003 has expired and Lessee is currently a month-to-month tenant. During the remaining term of this Lease, Rent shall be due and payable monthly in advance on or before the first day of each month. The monthly Rent shall be increased beginning September 1, 2013, and on September 1<sup>st</sup> of each year thereafter by an amount of four percent (4%). Payment shall be made to the Director of Finance and Budget at Olympia City Hall, Olympia, Washington. Any Rent payments received by Olympia after the due date shall include a late payment penalty of two percent (2%) of such Rent for each day or part thereof past the due date. 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 3.36 at the same time as consideration is due under this Lease Agreement. Grantee shall pay Olympia a late payment charge equal to ten percent (10%) of the late payment for any payment not paid when due. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property.

4. Disclaimer of Liability and Indemnity.

a. Olympia shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Area or its Equipment, except to the extent that any such injury or damage is due to the negligence or intentional acts of Olympia, its employees, agents or independent contractors.

b. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, employees, from any and all claims, costs, lawsuits (including but not limited to reasonable attorneys fees), damages, actions, or liability whatsoever which may arise from Lessee's use of the Area and Antenna Facilities. The foregoing promise shall include, but not be 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. This obligation shall survive expiration or termination of this Lease.

c. Lessee shall not be responsible for the solely negligent acts or omissions or willful misconduct of Olympia's agents, officers and employees.

d. In the event any action or proceeding shall be brought against a party by reason of any matter for which it is indemnified hereunder, the indemnifying party shall, upon notice from the indemnitee, at the indemnifying party's sole cost and expense, defend the same with legal reasonably selected by the indemnitee; provided however, that the indemnifying party shall not admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of the indemnitee without the indemnitee's prior written consent.

e. Each party shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this Section. Nothing herein shall be deemed to prevent Olympia from cooperating with Lessee and participating in the defense of any litigation by Olympia's own counsel.

f. Except for indemnification pursuant to this Paragraph 4 and Paragraph 12, neither party shall be liable to the other, or any of their respective agents, representatives, employees 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 (including negligence), strict liability or otherwise.

h. Nothing in the proceeding paragraphs of Section 4 shall be construed to create any additional liability to any third party. Rather the proceeding provisions are solely for the purpose of allocating risk and liability or between the parties to this agreement.

5. Insurance.

While this Lease is in effect or while any Equipment is located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with coverage of Two Million Dollars (\$2,000,000) combined limit. Olympia, its officers, agents, and employees shall be named as additional insured on such policy. Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that the coverage shall not be terminated without thirty (30) days prior written notice to Olympia.

6. Term and Renewal.

The term of this Lease shall commence September 1, 2012 (the "Commencement Date") and shall expire on August 31, 2017 unless sooner terminated as provided herein. This Lease Agreement shall automatically be extended for two (2) additional five (5) year terms unless Lessee terminates its at the end of the then current term by giving Olympia written notice of the intent to terminate at least six (6) months prior to the end of the then current term. In the event Lessee wishes to renew this Lease at the end of the third (3rd) five (5) year extension term, it shall give notice to Olympia at least one hundred eighty (180) days before its expiration. The decision to renew shall be within the sole but reasonable discretion of Olympia. Notwithstanding anything stated herein to the contrary, Lessee may not renew this Lease, unless it is in full compliance with all terms and conditions contained herein. Unless Lessee wishes to renew this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

7. Breach.

a. In the event Lessee shall violate 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 Agreement. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of such written notice, Olympia may terminate this Lease agreement and reenter the Property upon prior written notice to Lessee. Upon termination of this Lease, Lessee shall return the Property to Olympia in good, useable condition, normal wear and tear excepted. Lessee shall be liable to Olympia for any unpaid annual rent as of the date of termination of the Agreement. Olympia's failure to use remedies provided herein shall not constitute a waiver by Olympia. Olympia may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Olympia with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia shall have 30 days in which to cure any such breach. Lessee's failure to use remedies provided herein shall not constitute a waiver by Lessee. Lessee may not maintain any action of effect any remedies for default against Olympia unless and until Olympia has failed to cure the breach within the time periods provided in this Paragraph.

8. Notice.

Any notice required to be given under this Lease shall be deemed given three (3) days subsequent to 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 LESSORS:           City of Olympia  
                              ATTN: Public Works Department  
                              P.O. Box 1967  
                              Olympia, WA 98507-1967

TO LESSEE: T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: Lease Compliance/SE05025A

9. Alteration.

Lessee shall not make any alterations, additions, or improvements in the 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 shall not be unreasonably withheld, conditioned or delayed. All alterations, additions, and improvements shall be at the sole cost and expense of Lessee and shall become the Property of Olympia, excluding Lessee's antenna and Equipment, and be surrendered with the Property as a part thereof at the termination of this Lease, without disturbance, molestation, or injury. Olympia will cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Equipment. If Lessee shall perform work in the Property with the consent of Olympia, Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Olympia and any other authorized applicable authority. Lessee shall be liable to Olympia for any damage or loss caused by its Lessee's agents, employees, or representatives to the Property. Lessee shall have the right to alter, replace, enhance and upgrade the equipment at the 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 shall not cause measureable interference with existing facilities or operations at the Property. For other alterations, including but not limited to an increase in the height of the Equipment, increase in the use of ground space on site, or the substitution of substantially larger equipment, Olympia must approve such alterations, with such approval not to be unreasonably withheld, conditioned or delayed.

10. Ownership and Removal of Improvements.

All buildings, landscaping, and all other improvements, except Lessee's Equipment, shall become the property of Olympia upon expiration or termination of this Lease. In the event that

Lease Agreement/ Olympia – T-Mobile West (SE05025A/Elliot)

Olympia require removal of such improvements and restoration, such removal and restoration shall be accomplished at the sole expense of Lessee and completed within ninety (90) days after receiving notice from Olympia requiring removal of the improvements. In the event Equipment is left upon the Property after expiration or termination of this Lease, they shall become 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 Premises 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.

11. Interference with Other Users.

a. The Equipment that Lessee installs shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently licensed and operating communications equipment of Olympia, other existing tenants on the tower, or at 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 facilities at Lessee's sole expense and without installation of extra filters on Olympia-owned equipment.

b. Upon the Commencement Date, Lessee shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Lessee's Equipment complies with all applicable federal requirements for radio frequency (RF) emissions, and that Lessee's Equipment will not cause measurable interference with the equipment located on the Property.

c. Lessee understands that no use of the Area will be permitted which exceeds federal RF emissions standards at the boundaries of the Area. If the cumulative RF emissions levels ever exceed applicable federal standards, all users of the Area, including Lessee, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

d. Lessee's installation, operation, and maintenance of its Equipment shall not damage

Lease Agreement/ Olympia – T-Mobile West (SE05025A/Elliot)

or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities at the Property or with such activities of other existing tenants at the Property. Lessee agrees to cease all such actions which materially interfere with Olympia's use of the Area immediately upon actual notice of such interference, provided however, in such case, Lessee shall have the right to terminate the Lease.

e. Olympia do 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, the procedures of this section shall govern to determine whether such antenna or transmission facility will interfere with Lessee's Equipment operations. If Olympia receive any such request, Olympia shall submit a proposal complete with all technical specifications reasonably requested by prospective tenant to Lessee for review for noninterference; however, Olympia shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee shall have 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 shall 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 30 day period and Lessee's objections are verified by Olympia to be valid, then Olympia shall not proceed with such proposal unless Olympia modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may proceed with and be allowed to 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 Area is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.

12. Hazardous Substances.

Olympia represent 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

Lease Agreement/ Olympia – T-Mobile West (SE05025A/Elliot)

dangerous in any applicable federal, state, or local law or regulation. Lessee shall not introduce any such Hazardous Substance on the Property in violation of any applicable law. Lessee represents warrants and agrees that its use of the Area and the Property shall be in compliance with all applicable state and federal environmental laws. Lessee will be 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 such Hazardous Substance(s). Olympia will be 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 12 shall survive the expiration or other termination of this Lease.

13. Assignment; Sublease.

Lessee shall not assign or transfer this Lease Agreement or sublet all or any portion of the Area either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation; nor shall title thereto, either legal or equitable, or any right, interest property therein pass to or vest in any entity without the prior written consent of Olympia, which shall not be unreasonably withheld, conditioned or delayed; Lessee shall promptly notify Olympia of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Lessee. Any such assignment, transfer, or sublet shall make this Lease subject to cancellation unless, and until Olympia shall have consented thereto. Notwithstanding the foregoing, this Lease shall not be assigned or sublet if Lessee is in violation of any provision thereof. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of Olympia to the Lessee's principal, 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

Lease Agreement/ Olympia – T-Mobile West (SE05025A/Elliott)

reorganization. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

14. Venue.

In the event of suit to enforce the terms and conditions of this Lease, venue shall be in the Superior Court in Thurston County, Washington, Washington law shall apply, and the prevailing party shall be awarded costs and reasonable attorney's fees.

15. Binding of Successors.

This Lease applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Lease.

16. Liens.

Lessee shall not cause or allow any lien to attach to the Property.

17. Termination.

In addition to termination under Section 7 herein, Lessor may terminate this Lease Agreement after written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination. Such termination shall be permitted in the event of bonify threat of public health and safety hazard to the public. Lessee may terminate this Lease with six (6) months written notice. Such termination shall be permitted in the event Lessee wishes to terminate this Lease Agreement at any time for any reason. Lessee shall also be permitted to terminate this Lease with one hundred twenty (120) days written notice in the event that Lessee cannot receive and transmit 360 degrees from the area as defined in Section 1 for reasons beyond Lessee's control. In this event, Lessee shall be entitled to a pro rata refund of Annual Rent less any damages it caused to the Property.

18. Right of Entry.

Olympia's agents, officers, and employees, may enter the Area (excluding the interior of the equipment shelter, unless accompanied by a representative of the Lessee) 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 will 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 Area without notice to Lessee. Olympia shall be liable for any damage to the Equipment caused by Olympia or their duly authorized agents, officers and employees

19. Whole Agreement.

This Lease contains the whole and entire agreement between the parties as to the transaction contained herein. All parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

20. Maintenance and Security.

Olympia has no responsibility for maintenance or for security for the improvements placed upon the Property by Lessee. Lessee shall have the right to install private utilities, at Lessee's expense, and to 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 used on the Property.

Lessee shall, at its own expense, maintain the Area and its Equipment in a safe condition, in good repair and in a manner suitable to Olympia. Additionally, Lessee shall keep the Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any undue vibration, heat or noise. Lessee shall have the responsibility for the maintenance, repair and security of its Equipment and leasehold improvements. Lessee's Equipment shall, at all times, be painted, at Lessee's expense, the same color as the underlying City property to which its Equipment is attached, or other color as the Olympia may specify. Any tree pruning or cutting that is required for installation and/or maintenance of the Area and

Equipment shall require Lessee to obtain permission from Olympia, and shall follow best management practices in accordance with City Code.

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 improvements of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and do the maintenance. Olympia will provide Lessee with space on the Property for the relocation of Lessee's Equipment during any such repairs or maintenance and hereby gives Lessee the right to operate a temporary facility on the Property provided such operation does not interfere with Olympia's repairs, maintenance or other use of the Property. Olympia will use its best efforts to speedily take care of any work which requires Lessee to remove or otherwise disable its Equipment.

21. Destruction of Lessee's Property.

Except as otherwise provided herein, this Lease may be terminated by Lessee, without any penalty or further liability immediately upon written notice if the Property or the Equipment are destroyed or damaged by natural causes so as in the reasonable judgment of Lessee to substantially and adversely affect the effective use of the Equipment. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, Olympia shall be entitled to any rent, damages reimbursement and/or fees that may be due, if any, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee, if any. If Lessee elects to continue this Lease, then all Rent shall abate until the Property is restored to the condition existing immediately prior to such damage or destruction.

22. 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

Lease Agreement/ Olympia – T-Mobile West (SE05025A/Elliot)

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 Property, any such sale, hypothecation, or transfer of all or any portion of the Property shall be made subject to the terms, provisions, and conditions of this Lease.

23. Holding Over.

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month at two times the rent, or two hundred percent (200%) herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

24. Acceptance of Area.

By taking possession of the Area, Lessee accepts the Area in the condition existing as of the Commencement Date. Olympia makes no representation or warranty with respect to the condition of the Area. 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) the 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.

25. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. 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 shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take

such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

27. Miscellaneous.

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_ 2012

**Approved as to form:**

Darren Nienaber

Darren Nienaber, Deputy City Attorney

**LESSOR  
CITY OF OLYMPIA**

\_\_\_\_\_  
Steve R. Hall, City Manager

**LESSEE  
T-MOBILE WEST CORPORATION**

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

Printed Name: Kautilya Lanba

Title: Regional Director of Engineering and Operations, PNW Region

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



Exhibit A

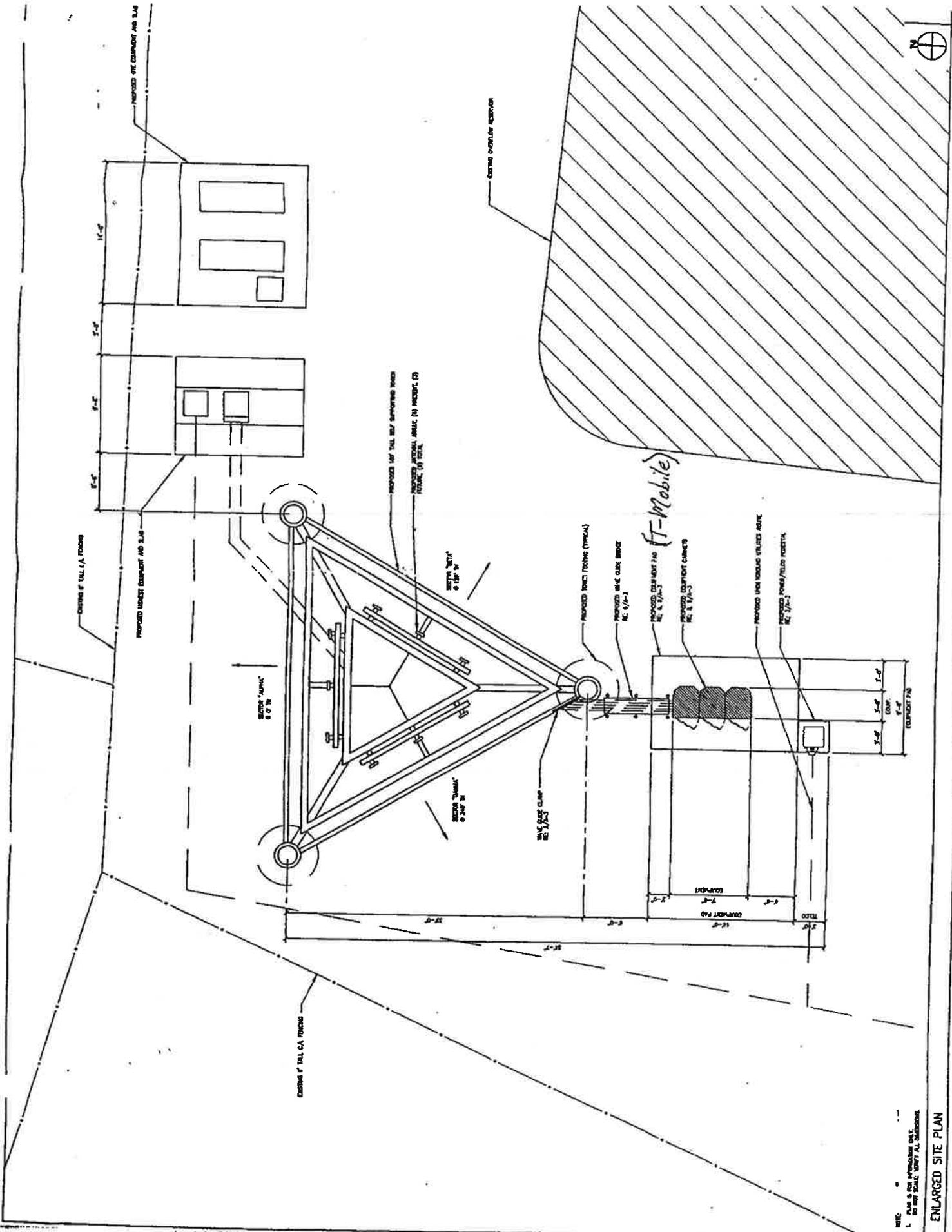
Property Description

THE NORTH 850 FEET OF THE SOUTH 910 FEET OF THAT PART OF 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 AS BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 5, 330 FEET EAST OF ITS SOUTHWEST CORNER; RUNNING THENCE NORTH 310 FEET; THENCE WEST 60 FEET; THENCE NORTH 600 FEET TO THE NORTH TERMINUS OF SAID LINE

IN THURSTON COUNTY, WASHINGTON.

Exhibit B

Antenna Facilities  
(See Attached)



*(T-Mobile)*

NOTE:  
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

ENLARGED SITE PLAN

**LEASE AGREEMENT**

2711 Log Cabin Road SE  
Olympia, Washington 98507  
SE05158A / Log Cabin

This Lease Agreement (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Olympia, Lessor, ("Olympia"), and T-Mobile West Corporation, a Delaware corporation, (“Lessee”).

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Property, Area, and Antenna Facilities

Olympia hereby grants a nonexclusive lease to Lessee for property located on the following described property situated in Thurston County, State of Washington, with:

That east 200 feet of the north 200 feet of the following described real estate situated in Thurston County, state of Washington, to-wit: Beginning on a point on the north line of the south half of the southwest quarter of Section 30, Township 18 North, Range 1 West, W.M., which is 30 feet east of the southwest corner of said above mentioned subdivision, and being on the east line of the Boulevard Road: thence south and parallel to the west line of said subdivision 30 feet to the true point of beginning of this description, said point being on the easterly right-of-way line of Boulevard Road; thence southerly and parallel to the west line of said subdivision 400 feet; thence east and parallel to the north line of said subdivision 544.40 feet; thence north and parallel to the west line of said subdivision 400 feet to a point 30 feet south of the north line of said subdivision; thence west 544.40 feet to the point of beginning.

Which shall hereafter be called “the Property.” Provided, however, that Lessee’s use shall be limited as shown on the attached Exhibit A, which shall hereafter be called “the Area.”

## 2. Permitted Use

a. The use of the Area shall be limited to construction, maintenance, repairs, and operation of an electronic equipment shelter and associated equipment on the Property, and wireless antennas, attachments, and cables "Antenna Facilities" used by Lessee. Said items shall be considered equipment and shall be referred to as "Equipment" hereafter. Any other use of said Area shall cancel this Lease.

b. 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 all 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 Area twenty-four (24) hours a day, seven (7) days a week and for utilities necessary to operate the Equipment.

## 3. Compensation.

Beginning September 1, 2012, Lessee shall pay rent ("Rent") to Olympia in the sum of Seventeen Thousand Five Hundred and Seventy Six Dollars (\$17,576.00) annually, or One Thousand Four Hundred and Sixty Four and 67/100 Dollars (\$1,464.67) per month ("Annual Rent"). Notwithstanding the foregoing, Olympia acknowledges that the previous Lease Agreement executed on October 19, 2005 has expired and Lessee is currently a month-to-month tenant. During the remaining term of this Lease, Rent shall be due and payable monthly in advance on or before the first day of each month. The monthly Rent shall be increased four percent (4%) beginning September 1, 2013, and on September 1<sup>st</sup> of each year thereafter by an amount of four percent (4%). Payment shall be made to the Director of Finance and Budget at Olympia City Hall, Olympia, Washington. Any Rent payments received by Olympia after the due date shall include a late payment penalty of two percent (2%) of such Rent for each day or part thereof past the due date. 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

Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

pursuant to RCW 82.29A and OMC 3.36 at the same time as consideration is due under this Lease Agreement. Grantee shall pay Olympia a late payment charge equal to ten percent (10%) of the late payment for any payment not paid when due. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property.

4. Disclaimer of Liability and Indemnity.

a. Olympia shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Area or its Equipment, except to the extent that any such injury or damage is due to the negligence or intentional acts of Olympia, its employees, agents or independent contractors.

b. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, employees, from any and all claims, costs, lawsuits (including but not limited to reasonable attorneys fees), damages, actions, or liability whatsoever which may arise from Lessee's use of the Area and Antenna Facilities. The foregoing promise shall include, but not be 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. This obligation shall survive expiration or termination of this Lease.

c. Lessee shall not be responsible for the solely negligent acts or omissions or willful misconduct of Olympia's agents, officers and employees.

d. In the event any action or proceeding shall be brought against a party by reason of any matter for which it is indemnified hereunder, the indemnifying party shall, upon notice from the indemnitee, at the indemnifying party's sole cost and expense, defend the same with legal reasonably selected by the indemnitee; provided however, that the indemnifying party shall not admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of the indemnitee without the indemnitee's prior written consent.

e. Each party shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this Section. Nothing herein shall be deemed to prevent Olympia from cooperating with Lessee and participating in the defense of any litigation by Olympia's own counsel.

f. Except for indemnification pursuant to this Paragraph 4 and Paragraph 12, neither party shall be liable to the other, or any of their respective agents, representatives, employees 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 (including negligence), strict liability or otherwise.

h. Nothing in the proceeding paragraphs of Section 4 shall be construed to create any additional liability to any third party. Rather the proceeding provisions are solely for the purpose of allocating risk and liability or between the parties to this agreement.

#### 5. Insurance.

While this Lease is in effect or while any Equipment is located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with coverage of Two Million Dollars (\$2,000,000) combined limit. Olympia, its officers, agents, and employees shall be named as additional insured on such policy. Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that the coverage shall not be terminated without thirty (30) days prior written notice to Olympia.

#### 6. Term and Renewal.

The term of this Lease shall commence September 1, 2012 (the "Commencement Date") and shall expire on August 31, 2017 unless sooner terminated as provided herein. This Lease Agreement shall automatically be extended for two (2) additional five (5) year terms unless Lessee terminates its at the end of the then current term by giving Olympia written notice of the intent to terminate at least six (6) months prior to the end of the then current term. In the event Lessee wishes to renew this Lease at the end of the third (3rd) five (5) year extension term, it

Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

shall give notice to Olympia at least one hundred eighty (180) days before its expiration. The decision to renew shall be within the sole but reasonable discretion of Olympia. Notwithstanding anything stated herein to the contrary, Lessee may not renew this Lease, unless it is in full compliance with all terms and conditions contained herein. Unless Lessee wishes to renew this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

7. Breach.

a. In the event Lessee shall violate 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 Agreement. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of such written notice, Olympia may terminate this Lease agreement and reenter the Property upon prior written notice to Lessee. Upon termination of this Lease, Lessee shall return the Property to Olympia in good, useable condition, normal wear and tear excepted. Lessee shall be liable to Olympia for any unpaid annual rent as of the date of termination of the Agreement. Olympia's failure to use remedies provided herein shall not constitute a waiver by Olympia. Olympia may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Olympia with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia shall have 30 days in which to cure any such breach. Lessee's failure to use remedies provided herein shall not constitute a waiver by Lessee. Lessee may not maintain any action of effect any remedies for default against Olympia unless and until Olympia has failed to cure the breach within the time periods provided in this Paragraph.

8. Notice.

Any notice required to be given under this Lease shall be deemed given three (3) days subsequent to 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 LESSORS: City of Olympia  
ATTN: Public Works Department  
P.O. Box 1967  
Olympia, WA 98507-1967

TO LESSEE: T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: Lease Compliance/SE05158A

9. Alteration.

Lessee shall not make any alterations, additions, or improvements in the 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 shall not be unreasonably withheld, conditioned or delayed. All alterations, additions, and improvements shall be at the sole cost and expense of Lessee and shall become the Property of Olympia, excluding Lessee's antenna and Equipment, and be surrendered with the Property as a part thereof at the termination of this Lease, without disturbance, molestation, or injury. Olympia will cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Equipment. If Lessee shall perform work in the Property with the consent of Olympia, Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Olympia and any other authorized applicable authority. Lessee shall be liable to Olympia for any damage or loss caused by its Lessee's agents, employees, or representatives to the Property. Lessee shall have the right to alter, replace, enhance and upgrade the equipment at the 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 shall not cause measureable interference with existing facilities or operations at the Property. For other alterations, including but not limited to an increase in the height of the Equipment, increase in the use of ground space on site, or the substitution of substantially larger equipment, Olympia must approve such alterations, with such approval not to be unreasonably withheld, conditioned or delayed.

#### 10. Ownership and Removal of Improvements.

All buildings, landscaping, and all other improvements, except Lessee's Equipment, shall become the property of Olympia upon expiration or termination of this Lease. In the event that Olympia require removal of such improvements and restoration, such removal and restoration shall be accomplished at the sole expense of Lessee and completed within ninety (90) days after receiving notice from Olympia requiring removal of the improvements. In the event Equipment is left upon the Property after expiration or termination of this Lease, they shall become 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 Premises 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.

#### 11. Interference with Other Users.

a. The Equipment that Lessee installs shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently licensed and operating communications equipment of Olympia, other existing tenants on the tower, or at 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 facilities at Lessee's sole expense and without installation of extra filters on Olympia - owned equipment.

b. Upon the Commencement Date, Lessee shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Lessee's Equipment complies with all applicable federal requirements for radio frequency (RF) emissions, and that Lessee's Equipment will not cause measurable interference with the equipment located on the Property.

c. Lessee understands that no use of the Area will be permitted which exceeds federal RF emissions standards at the boundaries of the Area. If the cumulative RF emissions levels ever exceed applicable federal standards, all users of the Area, including Lessee, will be required

Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

d. Lessee's installation, operation, and maintenance of its Equipment shall not damage or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities at the Property or with such activities of other existing tenants at the Property. Lessee agrees to cease all such actions which materially interfere with Olympia's use of the Area immediately upon actual notice of such interference, provided however, in such case, Lessee shall have the right to terminate the Lease.

e. Olympia do 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, the procedures of this section shall govern to determine whether such antenna or transmission facility will interfere with Lessee's Equipment operations. If Olympia receive any such request, Olympia shall submit a proposal complete with all technical specifications reasonably requested by prospective tenant to Lessee for review for noninterference; however, Olympia shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee shall have 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 shall 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 30 day period and Lessee's objections are verified by Olympia to be valid, then Olympia shall not proceed with such proposal unless Olympia modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may proceed with and be allowed to 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 Area is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.

12. Hazardous Substances.

Olympia represent 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 such Hazardous Substance on the Property in violation of any applicable law. Lessee represents warrants and agrees that its use of the Area and the Property shall be in compliance with all applicable state and federal environmental laws. Lessee will be 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 such Hazardous Substance(s). Olympia will be 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 12 shall survive the expiration or other termination of this Lease.

13. Assignment; Sublease.

Lessee shall not assign or transfer this Lease Agreement or sublet all or any portion of the Area either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation; nor shall title thereto, either legal or equitable, or any right, interest property therein pass to or vest in any entity without the prior written consent of Olympia, which shall not be unreasonably withheld, conditioned or delayed; Lessee shall promptly notify Olympia of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Lessee. Any such assignment, transfer, or sublet shall make this Lease subject to cancellation unless, and until Olympia shall have consented thereto. Notwithstanding the foregoing, this Lease shall not be assigned or sublet if Lessee is in violation of any provision thereof. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of Olympia to the Lessee's Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

principal, 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. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

14. Venue.

In the event of suit to enforce the terms and conditions of this Lease, venue shall be in the Superior Court in Thurston County, Washington, Washington law shall apply, and the prevailing party shall be awarded costs and reasonable attorney's fees.

15. Binding of Successors.

This Lease applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Lease.

16. Liens.

Lessee shall not cause or allow any lien to attach to the Property.

17. Termination.

In addition to termination under Section 7 herein, Lessor may terminate this Lease Agreement after written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination. Such termination shall be permitted in the event of bonify threat of public health and safety hazard to the public. Lessee may terminate this Lease with six (6) months written notice. Such termination shall be permitted in the event Lessee wishes to terminate this Lease Agreement at any time for any reason. Lessee shall also be permitted to terminate this Lease with one hundred twenty (120) days written notice in the event that Lessee cannot receive and transmit 360 degrees from the area as defined in Section 1 for reasons beyond Lessee's control. In this event, Lessee shall be entitled to a pro rata refund of Annual Rent less any damages it caused to the Property.

Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

18. Right of Entry.

Olympia's agents, officers, and employees, may enter the Area (excluding the interior of the equipment shelter, unless accompanied by a representative of the Lessee) 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 will 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 Area without notice to Lessee. Olympia shall be liable for any damage to the Equipment caused by Olympia or their duly authorized agents, officers and employees

19. Whole Agreement.

This Lease contains the whole and entire agreement between the parties as to the transaction contained herein. All parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

20. Maintenance and Security.

Olympia has no responsibility for maintenance or for security for the improvements placed upon the Property by Lessee. Lessee shall have the right to install private utilities, at Lessee's expense, and to 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 used on the Property.

Lessee shall, at its own expense, maintain the Area and its Equipment in a safe condition, in good repair and in a manner suitable to Olympia. Additionally, Lessee shall keep the Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any undue vibration, heat or noise. Lessee shall have the responsibility for the maintenance, repair and security of its Equipment and leasehold improvements. Lessee's Equipment shall, at all times, be painted, at Lessee's expense, the same color as the underlying Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

City property to which its Equipment is attached, or other color as the Olympia may specify. Any tree pruning or cutting that is required for installation and/or maintenance of the Area and Equipment shall require Lessee to obtain permission from Olympia, and shall follow best management practices in accordance with City Code.

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 improvements of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and do the maintenance. Olympia will provide Lessee with space on the Property for the relocation of Lessee's Equipment during any such repairs or maintenance and hereby gives Lessee the right to operate a temporary facility on the Property provided such operation does not interfere with Olympia's repairs, maintenance or other use of the Property. Olympia will use its best efforts to speedily take care of any work which requires Lessee to remove or otherwise disable its Equipment.

21. Destruction of Lessee's Property.

Except as otherwise provided herein, this Lease may be terminated by Lessee, without any penalty or further liability immediately upon written notice if the Property or the Equipment are destroyed or damaged by natural causes so as in the reasonable judgment of Lessee to substantially and adversely affect the effective use of the Equipment. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, Olympia shall be entitled to any rent, damages reimbursement and/or fees that may be due, if any, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee, if any. If Lessee elects to continue this Lease, then all Rent shall abate until the Property is restored to the condition existing immediately prior to such damage or destruction.

22. 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)

Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

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 Property, any such sale, hypothecation, or transfer of all or any portion of the Property shall be made subject to the terms, provisions, and conditions of this Lease.

23. Holding Over.

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month at two times the rent, or two hundred percent (200%) herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

24. Acceptance of Area.

By taking possession of the Area, Lessee accepts the Area in the condition existing as of the Commencement Date. Olympia makes no representation or warranty with respect to the condition of the Area. 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) the 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.

25. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. 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 shall not  
Lease Agreement/ Olympia – T-Mobile West (SE05158A – Log Cabin) Boulevard

waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

27. Miscellaneous.

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_ 2012

**Approved as to form:**

*Darren Nienaber*

\_\_\_\_\_  
Darren Nienaber, Deputy City Attorney

\_\_\_\_\_  
**LESSOR**  
**CITY OF OLYMPIA**

\_\_\_\_\_  
Steve R. Hall, City Manager

**LESSEE**  
**T-MOBILE WEST CORPORATION**

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

Printed Name: Kautilya Lanba

Title: Regional Director of Engineering and Operations, PNW Region

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2012, before me personally appeared Steve R. Hall, to me known to be the City Manager for the City of Olympia, a municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is 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  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

STATE OF \_\_\_\_\_  
 ) ss.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2012, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_, 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 \_\_\_\_\_.

Exhibit A

Property Description

**That East 200 feet of the North 200 feet of the following described real estate situated in Thurston County, State of Washington:**

**Beginning at a point on the North line of the South half of the Southwest quarter of Section 30, Township 18 North, Range 1 West, W.M., which is 30 feet East of the Northwest corner of said above-mentioned subdivision, and being on the East line of the Boulevard Road; thence South and parallel to the West line of said subdivision 30 feet to the true point of beginning of this description, said point being on the Easterly right of way line of Boulevard Road; thence Southerly and parallel to the West line of said subdivision 400 feet; thence East and parallel to the North line of said subdivision 544.50 feet; thence North and parallel to the West line of said subdivision 400 feet to a point 30 feet South of the North line of said subdivision; thence West 544.50 feet to the point of beginning.**

**In Thurston County, Washington.**

Exhibit B

Antenna Facilities  
(See Attached)



## LEASE AGREEMENT

505 Birch Street NW  
Olympia, Washington 98502  
SE05034A/Capitol Mall-TCI

This Lease Agreement (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Olympia, Lessor, ("Olympia"), and T-Mobile West Corporation, a Delaware corporation, (“Lessee”).

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Property, Area, and Antenna Facilities

Olympia hereby grants a nonexclusive lease to Lessee for property located on the following described property situated in Thurston County, State of Washington, to with:

Lots 1 and 2 in Block 7 of Hale Western Addition to Olympia as recorded in Volume 2 of Plats, Page 3; TOGETHER with vacated street adjoining said lot 2 on the south side and the west half of the vacated portion of street adjoining said property on the east.

Which shall hereafter be called “the Property.” Provided, however, that Lessee’s use shall be limited as shown on the attached Exhibit A, which shall hereafter be called “the Area.”

2. Permitted Use

a. The use of the Area shall be limited to construction, maintenance, repairs, and operation of an electronic equipment shelter and associated equipment on the Property, and wireless antennas, attachments, and cables "Antenna Facilities" used by Lessee. Said items shall be considered equipment and shall be referred to as “Equipment” hereafter. Any other use of said Area shall cancel this Lease.

b. 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 all 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 Area twenty-four (24) hours a day, seven (7) days a week and for utilities necessary to operate the Equipment.

### 3. Compensation.

Beginning September 1, 2012, Lessee shall pay rent ("Rent") to Olympia in the sum of Eleven Thousand Four Hundred Forty-four and No/100 Dollars (\$11,440.00) annually, or Nine Hundred Fifty-three and 34/100 Dollars (\$953.34) per month ("Annual Rent") during calendar year 2012 commencing on the Commencement Date (as defined below), and the first monthly installment of Rent is due upon execution of this Lease. Partial months in 2012 shall be prorated. During the remaining term of this Lease, Rent shall be due and payable monthly in advance on or before the first day of each month. The monthly Rent shall be increased beginning September 1, 2012, and on September 1<sup>st</sup> of each year thereafter by an amount of four percent (4%). Payment shall be made to the Director of Finance and Budget at Olympia City Hall, Olympia, Washington. Any Rent payments received by Olympia after the due date shall include a late payment penalty of two percent (2%) of such Rent for each day or part thereof past the due date. 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 3.36 at the same time as consideration is due under this Lease Agreement. Grantee shall pay Olympia a late payment charge equal to ten percent (10%) of the late payment for any payment not paid when due. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property.

4. Disclaimer of Liability and Indemnity.

a. Olympia shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Area or its Equipment, except to the extent that any such injury or damage is due to the negligence or intentional acts of Olympia, its employees, agents or independent contractors.

b. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, employees, from any and all claims, costs, lawsuits (including but not limited to reasonable attorneys fees), damages, actions, or liability whatsoever which may arise from Lessee's use of the Area and Antenna Facilities. The foregoing promise shall include, but not be 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. This obligation shall survive expiration or termination of this Lease.

c. Lessee shall not be responsible for the solely negligent acts or omissions or willful misconduct of Olympia's agents, officers and employees.

d. In the event any action or proceeding shall be brought against a party by reason of any matter for which it is indemnified hereunder, the indemnifying party shall, upon notice from the indemnitee, at the indemnifying party's sole cost and expense, defend the same with legal reasonably selected by the indemnitee; provided however, that the indemnifying party shall not admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of the indemnitee without the indemnitee's prior written consent.

e. Each party shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this Section. Nothing herein shall be deemed to prevent Olympia from cooperating with Lessee and participating in the defense of any litigation by Olympia's own counsel.

f. Except for indemnification pursuant to this Paragraph 4 and Paragraph 12, neither party shall be liable to the other, or any of their respective agents, representatives, employees 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 (including negligence), strict liability or otherwise.

h. Nothing in the proceeding paragraphs of Section 4 shall be construed to create any additional liability to any third party. Rather the proceeding provisions are solely for the purpose of allocating risk and liability or between the parties to this agreement.

5. Insurance.

While this Lease is in effect or while any Equipment is located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with coverage of Two Million Dollars (\$2,000,000) combined limit. Olympia, its officers, agents, and employees shall be named as additional insured on such policy. Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that the coverage shall not be terminated without thirty (30) days prior written notice to Olympia.

6. Term and Renewal.

The term of this Lease shall commence September 1, 2012 (the "Commencement Date") and shall expire on August 31, 2017, unless sooner terminated as provided herein. This Lease Agreement shall automatically be extended for two (2) additional five (5) year terms unless Lessee terminates its at the end of the then current term by giving Olympia written notice of the intent to terminate at least six (6) months prior to the end of the then current term. In the event Lessee wishes to renew this Lease at the end of the third (3rd) five (5) year extension term, it shall give notice to Olympia at least one hundred eighty (180) days before its expiration. The decision to renew shall be within the sole but reasonable discretion of Olympia. Notwithstanding anything stated herein to the contrary, Lessee may not renew this Lease, unless it is in full compliance with all terms and conditions contained herein. Unless Lessee wishes to renew this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

7. Breach.

a. In the event Lessee shall violate 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 Agreement. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of such written notice, Olympia may terminate this Lease agreement and reenter the Property upon prior written notice to Lessee. Upon termination of this Lease, Lessee shall return the Property to Olympia in good, useable condition, normal wear and tear excepted. Lessee shall be liable to Olympia for any unpaid annual rent as of the date of termination of the Agreement. Olympia's failure to use remedies provided herein shall not constitute a waiver by Olympia. Olympia may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Olympia with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia shall have 30 days in which to cure any such breach. Lessee's failure to use remedies provided herein shall not constitute a waiver by Lessee. Lessee may not maintain any action of effect any remedies for default against Olympia unless and until Olympia has failed to cure the breach within the time periods provided in this Paragraph.

8. Notice.

Any notice required to be given under this Lease shall be deemed given three (3) days subsequent to 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 LESSORS:           City of Olympia  
                              ATTN: Public Works Department  
                              P.O. Box 1967  
                              Olympia, WA 98507-1967

TO LESSEE: T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> StreetAddress  
Attention: PCS Lease Administrator  
Bellevue, WA 98006

**With a copy to:**

Attn: Legal Dept.

**And with a copy to:**

T-Mobile West Corporation  
19807 North Creek Parkway North  
Bothell, WA 98011  
Attn: Lease Administration Manager

**With a copy to:**

Attn: Legal Dept.

9. Alteration.

Lessee shall not make any alterations, additions, or improvements in the 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 shall not be unreasonably withheld, conditioned or delayed. All alterations, additions, and improvements shall be at the sole cost and expense of Lessee and shall become the Property of Olympia, excluding Lessee's antenna and Equipment, and be surrendered with the Property as a part thereof at the termination of this Lease, without disturbance, molestation, or injury. Olympia will cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Equipment. If Lessee shall perform work in the Property with the consent of Olympia, Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Olympia and any other authorized applicable authority. Lessee shall be liable to Olympia for any damage or loss caused by its Lessee's agents, employees, or representatives to the Property.

Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

Lessee shall have the right to alter, replace, enhance and upgrade the equipment at the 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 shall not cause measureable interference with existing facilities or operations at the Property. For other alterations, including but not limited to an increase in the height of the Equipment, increase in the use of ground space on site, or the substitution of substantially larger equipment, Olympia must approve such alterations, with such approval not to be unreasonably withheld, conditioned or delayed.

10. Ownership and Removal of Improvements.

All buildings, landscaping, and all other improvements, except Lessee's Equipment, shall become the property of Olympia upon expiration or termination of this Lease. In the event that Olympia require removal of such improvements and restoration, such removal and restoration shall be accomplished at the sole expense of Lessee and completed within ninety (90) days after receiving notice from Olympia requiring removal of the improvements. In the event Equipment is left upon the Property after expiration or termination of this Lease, they shall become 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 Premises 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.

11. Interference with Other Users.

a. The Equipment that Lessee installs shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently licensed and operating communications equipment of Olympia, other existing tenants on the tower, or at 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 facilities at Lessee's sole expense and without installation of extra filters on Olympia -

Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

owned equipment.

b. Upon the Commencement Date, Lessee shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Lessee's Equipment complies with all applicable federal requirements for radio frequency (RF) emissions, and that Lessee's Equipment will not cause measurable interference with the equipment located on the Property.

c. Lessee understands that no use of the Area will be permitted which exceeds federal RF emissions standards at the boundaries of the Area. If the cumulative RF emissions levels ever exceed applicable federal standards, all users of the Area, including Lessee, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

d. Lessee's installation, operation, and maintenance of its Equipment shall not damage or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities at the Property or with such activities of other existing tenants at the Property. Lessee agrees to cease all such actions which materially interfere with Olympia's use of the Area immediately upon actual notice of such interference, provided however, in such case, Lessee shall have the right to terminate the Lease.

e. Olympia do 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, the procedures of this section shall govern to determine whether such antenna or transmission facility will interfere with Lessee's Equipment operations. If Olympia receive any such request, Olympia shall submit a proposal complete with all technical specifications reasonably requested by prospective tenant to Lessee for review for noninterference; however, Olympia shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee shall have 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 shall be deemed consent by Lessee to the installation of antennas or transmission

Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

facilities pursuant to said proposal. If Lessee gives notice of objection due to interference during such 30 day period and Lessee's objections are verified by Olympia to be valid, then Olympia shall not proceed with such proposal unless Olympia modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may proceed with and be allowed to 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 Area is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.

12. Hazardous Substances.

Olympia represent 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 such Hazardous Substance on the Property in violation of any applicable law. Lessee represents warrants and agrees that its use of the Area and the Property shall be in compliance with all applicable state and federal environmental laws. Lessee will be 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 such Hazardous Substance(s). Olympia will be 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 12 shall survive the expiration or other termination of this Lease.

13. Assignment; Sublease.

Lessee shall not assign or transfer this Lease Agreement or sublet all or any portion of the Area either in whole or in part, either by involuntary sale or by voluntary sale, merger, Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

consolidation; nor shall title thereto, either legal or equitable, or any right, interest property therein pass to or vest in any entity without the prior written consent of Olympia, which shall not be unreasonably withheld, conditioned or delayed; Lessee shall promptly notify Olympia of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Lessee. Any such assignment, transfer, or sublet shall make this Lease subject to cancellation unless, and until Olympia shall have consented thereto. Notwithstanding the foregoing, this Lease shall not be assigned or sublet if Lessee is in violation of any provision thereof. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of Olympia to the Lessee's principal, 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. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

14. Venue.

In the event of suit to enforce the terms and conditions of this Lease, venue shall be in the Superior Court in Thurston County, Washington, Washington law shall apply, and the prevailing party shall be awarded costs and reasonable attorney's fees.

15. Binding of Successors.

This Lease applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Lease.

16. Liens.

Lessee shall not cause or allow any lien to attach to the Property.

17. Termination.

In addition to termination under Section 7 herein, Lessor may terminate this Lease Agreement after written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination. Such termination shall be permitted in the event of bonify threat of public health and safety hazard to the public. Lessee may terminate this Lease with six (6) months written notice. Such termination shall be permitted in the event Lessee wishes to terminate this Lease Agreement at any time for any reason. Lessee shall also be permitted to terminate this Lease with one hundred twenty (120) days written notice in the event that Lessee cannot receive and transmit 360 degrees from the area as defined in Section 1 for reasons beyond Lessee's control. In this event, Lessee shall be entitled to a pro rata refund of Annual Rent less any damages it caused to the Property.

18. Right of Entry.

Olympia's agents, officers, and employees, may enter the Area (excluding the interior of the equipment shelter, unless accompanied by a representative of the Lessee) 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 will 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 Area without notice to Lessee. Olympia shall be liable for any damage to the Equipment caused by Olympia or their duly authorized agents, officers and employees

19. Whole Agreement.

This Lease contains the whole and entire agreement between the parties as to the transaction contained herein. All parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

20. Maintenance and Security.

Olympia has no responsibility for maintenance or for security for the improvements placed upon the Property by Lessee. Lessee shall have the right to install private utilities, at Lessee's Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

expense, and to 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 used on the Property.

Lessee shall, at its own expense, maintain the Area and its Equipment in a safe condition, in good repair and in a manner suitable to Olympia. Additionally, Lessee shall keep the Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any undue vibration, heat or noise. Lessee shall have the responsibility for the maintenance, repair and security of its Equipment and leasehold improvements. Lessee's Equipment shall, at all times, be painted, at Lessee's expense, the same color as the underlying City property to which its Equipment is attached, or other color as the Olympia may specify. Any tree pruning or cutting that is required for installation and/or maintenance of the Area and Equipment shall require Lessee to obtain permission from Olympia, and shall follow best management practices in accordance with City Code.

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 improvements of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and do the maintenance. Olympia will provide Lessee with space on the Property for the relocation of Lessee's Equipment during any such repairs or maintenance and hereby gives Lessee the right to operate a temporary facility on the Property provided such operation does not interfere with Olympia's repairs, maintenance or other use of the Property. Olympia will use its best efforts to speedily take care of any work which requires Lessee to remove or otherwise disable its Equipment.

#### 21. Destruction of Lessee's Property.

Except as otherwise provided herein, this Lease may be terminated by Lessee, without any penalty or further liability immediately upon written notice if the Property or the Equipment are destroyed or damaged by natural causes so as in the reasonable judgment of Lessee to substantially and adversely affect the effective use of the Equipment. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, Olympia

Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

shall be entitled to any rent, damages reimbursement and/or fees that may be due, if any, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee, if any. If Lessee elects to continue this Lease, then all Rent shall abate until the Property is restored to the condition existing immediately prior to such damage or destruction.

22. 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 Property, any such sale, hypothecation, or transfer of all or any portion of the Property shall be made subject to the terms, provisions, and conditions of this Lease.

23. Holding Over.

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month at two times the rent, or two hundred percent (200%) herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

24. Acceptance of Area.

By taking possession of the Area, Lessee accepts the Area in the condition existing as of the Commencement Date. Olympia makes no representation or warranty with respect to the condition of the Area. 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) the 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 Lease Agreement/ Olympia – T-Mobile West (SE05034A/Capitol Mall-TCI) – Birch Street Reservoir

any provisions of the Lease; and (d) such other factual matters as Olympia may reasonably request.

25. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. 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 shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

27. Miscellaneous.

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_ 2012

**Approved as to form:**

*Darren Nienaber*

\_\_\_\_\_  
Darren Nienaber, Deputy City Attorney

**LESSOR  
CITY OF OLYMPIA**

\_\_\_\_\_  
Steve R. Hall, City Manager

**LESSEE  
T-MOBIL WEST CORPORATION**

**TENANT:** T-Mobile West Corporation

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

Printed Name: Kautilya Lanba

Title: Regional Director of Engineering and Operations, PNW Region

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



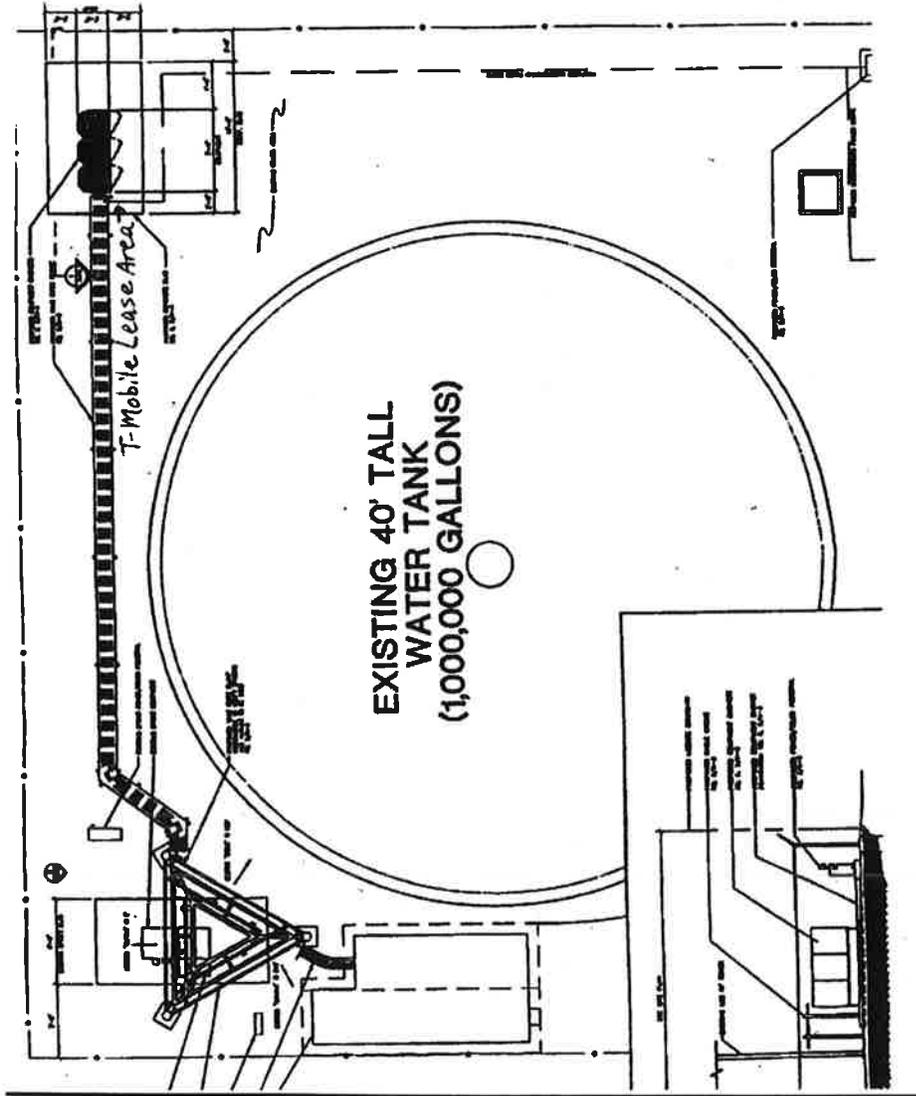
Exhibit A

Property Description

Lots 1 and 2 in Block 7 of Hale Western Addition to Olympia as recorded in Volume 2 of Plats, Page 3; TOGETHER with vacated street adjoining said lot 2 on the south side and the west half of the vacated portion of street adjoining said property on the east.

Exhibit B

Antenna Facilities  
(See attached)



**LEASE AGREEMENT**

707 Fir Street  
Olympia, Washington 98507  
SE05016C/Fir

This Lease Agreement (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Olympia, Lessor, ("Olympia"), and T-Mobile West Corporation, a Delaware corporation, (“Lessee”).

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Property, Area, and Antenna Facilities

Olympia hereby grants a nonexclusive lease to Lessee for property located on the following described property situated in Thurston County, State of Washington, with:

Block 11 of the Plat of Talcott Subdivision, as recorded in Volume 4 of Plats, Page 20, records of Thurston County, Washington.

Which shall hereafter be called “the Property.” Provided, however, that Lessee’s use shall be limited as shown on the attached Exhibit A, which shall hereafter be called “the Area.”

2. Permitted Use

a. The use of the Area shall be limited to construction, maintenance, repairs, and operation of an electronic equipment shelter and associated equipment on the Property, and wireless antennas, attachments, and cables "Antenna Facilities" used by Lessee. Said items shall be considered equipment and shall be referred to as “Equipment” hereafter. Any other use of said Area shall cancel this Lease.

b. 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 all 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 Area twenty-four (24) hours a day, seven (7) days a week and for utilities necessary to operate the Equipment.

### 3. Compensation.

Beginning September 1, 2012, Lessee shall pay rent ("Rent") to Olympia in the sum of Eleven Thousand Nine Hundred and Sixty and No/100 Dollars (\$11,960.00) annually, or Nine Hundred Ninety Six and 67/100 Dollars (\$996.67) per month ("Annual Rent"). Notwithstanding the foregoing, Olympia acknowledges that the previous Lease Agreement executed on November 12, 1997 has expired and Lessee is currently a month-to-month tenant. During the remaining term of this Lease, Rent shall be due and payable monthly in advance on or before the first day of each month. The monthly Rent shall be increased beginning September 1, 2013, and on September 1<sup>st</sup> of each year thereafter by an amount of four percent (4%). Payment shall be made to the Director of Finance and Budget at Olympia City Hall, Olympia, Washington. Any Rent payments received by Olympia after the due date shall include a late payment penalty of two percent (2%) of such Rent for each day or part thereof past the due date. 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 3.36 at the same time as consideration is due under this Lease Agreement. Grantee shall pay Olympia a late payment charge equal to ten percent (10%) of the late payment for any payment not paid when due. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property.

### 4. Disclaimer of Liability and Indemnity.

a. Olympia shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, Lease Agreement/ Olympia – T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

use, operation, condition or dismantling of the Area or its Equipment, except to the extent that any such injury or damage is due to the negligence or intentional acts of Olympia, its employees, agents or independent contractors.

b. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, employees, from any and all claims, costs, lawsuits (including but not limited to reasonable attorneys fees), damages, actions, or liability whatsoever which may arise from Lessee's use of the Area and Antenna Facilities. The foregoing promise shall include, but not be 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. This obligation shall survive expiration or termination of this Lease.

c. Lessee shall not be responsible for the solely negligent acts or omissions or willful misconduct of Olympia's agents, officers and employees.

d. In the event any action or proceeding shall be brought against a party by reason of any matter for which it is indemnified hereunder, the indemnifying party shall, upon notice from the indemnitee, at the indemnifying party's sole cost and expense, defend the same with legal reasonably selected by the indemnitee; provided however, that the indemnifying party shall not admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of the indemnitee without the indemnitee's prior written consent.

e. Each party shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this Section. Nothing herein shall be deemed to prevent Olympia from cooperating with Lessee and participating in the defense of any litigation by Olympia's own counsel.

f. Except for indemnification pursuant to this Paragraph 4 and Paragraph 12, neither party shall be liable to the other, or any of their respective agents, representatives, employees 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 (including negligence), strict liability or otherwise.

h. Nothing in the proceeding paragraphs of Section 4 shall be construed to create any additional liability to any third party. Rather the proceeding provisions are solely for the purpose of allocating risk and liability or between the parties to this agreement.

5. Insurance.

While this Lease is in effect or while any Equipment is located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with coverage of Two Million Dollars (\$2,000,000) combined limit. Olympia, its officers, agents, and employees shall be named as additional insured on such policy. Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that the coverage shall not be terminated without thirty (30) days prior written notice to Olympia.

6. Term and Renewal.

The term of this Lease shall commence September 1, 2012 (the "Commencement Date") and shall expire on August 31, 2017 unless sooner terminated as provided herein. This Lease Agreement shall automatically be extended for two (2) additional five (5) year terms unless Lessee terminates its at the end of the then current term by giving Olympia written notice of the intent to terminate at least six (6) months prior to the end of the then current term. In the event Lessee wishes to renew this Lease at the end of the third (3rd) five (5) year extension term, it shall give notice to Olympia at least one hundred eighty (180) days before its expiration. The decision to renew shall be within the sole but reasonable discretion of Olympia. Notwithstanding anything stated herein to the contrary, Lessee may not renew this Lease, unless it is in full compliance with all terms and conditions contained herein. Unless Lessee wishes to renew this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

7. Breach.

a. In the event Lessee shall violate 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 Agreement. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of Lease Agreement/ Olympia – T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

such written notice, Olympia may terminate this Lease agreement and reenter the Property upon prior written notice to Lessee. Upon termination of this Lease, Lessee shall return the Property to Olympia in good, useable condition, normal wear and tear excepted. Lessee shall be liable to Olympia for any unpaid annual rent as of the date of termination of the Agreement. Olympia's failure to use remedies provided herein shall not constitute a waiver by Olympia. Olympia may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Olympia with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia shall have 30 days in which to cure any such breach. Lessee's failure to use remedies provided herein shall not constitute a waiver by Lessee. Lessee may not maintain any action of effect any remedies for default against Olympia unless and until Olympia has failed to cure the breach within the time periods provided in this Paragraph.

8. Notice.

Any notice required to be given under this Lease shall be deemed given three (3) days subsequent to 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 LESSORS:           City of Olympia  
                              ATTN: Public Works Department  
                              P.O. Box 1967  
                              Olympia, WA 98507-1967

TO LESSEE:            T-Mobile USA, Inc.  
                              12920 SE 38<sup>th</sup> Street  
                              Bellevue, WA 98006  
                              Attn: Lease Compliance/SE05158A

#### 9. Alteration.

Lessee shall not make any alterations, additions, or improvements in the 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 shall not be unreasonably withheld, conditioned or delayed. All alterations, additions, and improvements shall be at the sole cost and expense of Lessee and shall become the Property of Olympia, excluding Lessee's antenna and Equipment, and be surrendered with the Property as a part thereof at the termination of this Lease, without disturbance, molestation, or injury. Olympia will cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Equipment. If Lessee shall perform work in the Property with the consent of Olympia, Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Olympia and any other authorized applicable authority. Lessee shall be liable to Olympia for any damage or loss caused by its Lessee's agents, employees, or representatives to the Property. Lessee shall have the right to alter, replace, enhance and upgrade the equipment at the 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 shall not cause measureable interference with existing facilities or operations at the Property. For other alterations, including but not limited to an increase in the height of the Equipment, increase in the use of ground space on site, or the substitution of substantially larger equipment, Olympia must approve such alterations, with such approval not to be unreasonably withheld, conditioned or delayed.

#### 10. Ownership and Removal of Improvements.

All buildings, landscaping, and all other improvements, except Lessee's Equipment, shall become the property of Olympia upon expiration or termination of this Lease. In the event that Olympia require removal of such improvements and restoration, such removal and restoration shall be accomplished at the sole expense of Lessee and completed within ninety (90) days after receiving notice from Olympia requiring removal of the improvements. In the event Equipment is left upon the Property after expiration or termination of this Lease, they shall become the property of Olympia if not removed by Lessee upon thirty (30) days written notice from

Lease Agreement/ Olympia – T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

Olympia. If such time for removal causes Lessee to remain on the Premises 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.

11. Interference with Other Users.

a. The Equipment that Lessee installs shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently licensed and operating communications equipment of Olympia, other existing tenants on the tower, or at 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 facilities at Lessee's sole expense and without installation of extra filters on Olympia-owned equipment.

b. Upon the Commencement Date, Lessee shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Lessee's Equipment complies with all applicable federal requirements for radio frequency (RF) emissions, and that Lessee's Equipment will not cause measurable interference with the equipment located on the Property.

c. Lessee understands that no use of the Area will be permitted which exceeds federal RF emissions standards at the boundaries of the Area. If the cumulative RF emissions levels ever exceed applicable federal standards, all users of the Area, including Lessee, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

d. Lessee's installation, operation, and maintenance of its Equipment shall not damage or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities at the Property or with such activities of other existing tenants at the Property. Lessee agrees to cease all such actions which materially interfere with Olympia's use of the Area immediately upon actual notice of such interference, provided however, in such case, Lessee shall have the right to terminate the Lease.

Lease Agreement/ Olympia – T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

e. Olympia do 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, the procedures of this section shall govern to determine whether such antenna or transmission facility will interfere with Lessee's Equipment operations. If Olympia receive any such request, Olympia shall submit a proposal complete with all technical specifications reasonably requested by prospective tenant to Lessee for review for noninterference; however, Olympia shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee shall have 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 shall 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 30 day period and Lessee's objections are verified by Olympia to be valid, then Olympia shall not proceed with such proposal unless Olympia modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may proceed with and be allowed to 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 Area is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.

12. Hazardous Substances.

Olympia represent 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 such Hazardous Substance on the Property in violation of any applicable law. Lessee represents warrants and agrees that its use of the Area and the Property shall be in compliance with all applicable state and federal environmental laws. Lessee will be solely responsible for and shall defend, indemnify, and hold Olympia, its agents and employees harmless from and

Lease Agreement/ Olympia – T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

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 such Hazardous Substance(s). Olympia will be 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 12 shall survive the expiration or other termination of this Lease.

13. Assignment; Sublease.

Lessee shall not assign or transfer this Lease Agreement or sublet all or any portion of the Area either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation; nor shall title thereto, either legal or equitable, or any right, interest property therein pass to or vest in any entity without the prior written consent of Olympia, which shall not be unreasonably withheld, conditioned or delayed; Lessee shall promptly notify Olympia of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Lessee. Any such assignment, transfer, or sublet shall make this Lease subject to cancellation unless, and until Olympia shall have consented thereto. Notwithstanding the foregoing, this Lease shall not be assigned or sublet if Lessee is in violation of any provision thereof. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of Olympia to the Lessee's principal, 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. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

14. Venue.

In the event of suit to enforce the terms and conditions of this Lease, venue shall be in the Superior Court in Thurston County, Washington, Washington law shall apply, and the prevailing party shall be awarded costs and reasonable attorney's fees.

15. Binding of Successors.

This Lease applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Lease.

16. Liens.

Lessee shall not cause or allow any lien to attach to the Property.

17. Termination.

In addition to termination under Section 7 herein, Lessor may terminate this Lease Agreement after written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination. Such termination shall be permitted in the event of bonify threat of public health and safety hazard to the public. Lessee may terminate this Lease with six (6) months written notice. Such termination shall be permitted in the event Lessee wishes to terminate this Lease Agreement at any time for any reason. Lessee shall also be permitted to terminate this Lease with one hundred twenty (120) days written notice in the event that Lessee cannot receive and transmit 360 degrees from the area as defined in Section 1 for reasons beyond Lessee's control. In this event, Lessee shall be entitled to a pro rata refund of Annual Rent less any damages it caused to the Property.

18. Right of Entry.

Olympia's agents, officers, and employees, may enter the Area (excluding the interior of the equipment shelter, unless accompanied by a representative of the Lessee) 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 will Olympia modify, remove, relocate or otherwise tamper with the Equipment. In the event of an Lease Agreement/ Olympia - T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

emergency, Olympia's agents, officers, and employees may enter the Area without notice to Lessee. Olympia shall be liable for any damage to the Equipment caused by Olympia or their duly authorized agents, officers and employees

19. Whole Agreement.

This Lease contains the whole and entire agreement between the parties as to the transaction contained herein. All parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

20. Maintenance and Security.

Olympia has no responsibility for maintenance or for security for the improvements placed upon the Property by Lessee. Lessee shall have the right to install private utilities, at Lessee's expense, and to 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 used on the Property.

Lessee shall, at its own expense, maintain the Area and its Equipment in a safe condition, in good repair and in a manner suitable to Olympia. Additionally, Lessee shall keep the Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any undue vibration, heat or noise. Lessee shall have the responsibility for the maintenance, repair and security of its Equipment and leasehold improvements. Lessee's Equipment shall, at all times, be painted, at Lessee's expense, the same color as the underlying City property to which its Equipment is attached, or other color as the Olympia may specify. Any tree pruning or cutting that is required for installation and/or maintenance of the Area and Equipment shall require Lessee to obtain permission from Olympia, and shall follow best management practices in accordance with City Code.

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 improvements of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and do the maintenance. Olympia will provide Lessee with space on the Property for the relocation

Lease Agreement/ Olympia – T-Mobile West (SE05016C Olympia H2O) Fir Street Water Tower

of Lessee's Equipment during any such repairs or maintenance and hereby gives Lessee the right to operate a temporary facility on the Property provided such operation does not interfere with Olympia's repairs, maintenance or other use of the Property. Olympia will use its best efforts to speedily take care of any work which requires Lessee to remove or otherwise disable its Equipment.

21. Destruction of Lessee's Property.

Except as otherwise provided herein, this Lease may be terminated by Lessee, without any penalty or further liability immediately upon written notice if the Property or the Equipment are destroyed or damaged by natural causes so as in the reasonable judgment of Lessee to substantially and adversely affect the effective use of the Equipment. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, Olympia shall be entitled to any rent, damages reimbursement and/or fees that may be due, if any, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee, if any. If Lessee elects to continue this Lease, then all Rent shall abate until the Property is restored to the condition existing immediately prior to such damage or destruction.

22. 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 Property, any such sale, hypothecation, or transfer of all or any portion of the Property shall be made subject to the terms, provisions, and conditions of this Lease.

23. Holding Over.

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month at two times the rent, or two hundred percent (200%) herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

24. Acceptance of Area.

By taking possession of the Area, Lessee accepts the Area in the condition existing as of the Commencement Date. Olympia makes no representation or warranty with respect to the condition of the Area. 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) the 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.

25. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. 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 shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

27. Miscellaneous.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012

**Approved as to form:**

Darren Nienaber

Darren Nienaber, Deputy City Attorney

**LESSOR  
CITY OF OLYMPIA**

\_\_\_\_\_  
Steve R. Hall, City Manager

**LESSEE  
T-MOBILE WEST CORPORATION**

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

Printed Name: Kautilya Lanba

Title: Regional Director of Engineering and Operations, PNW Region

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



Exhibit A

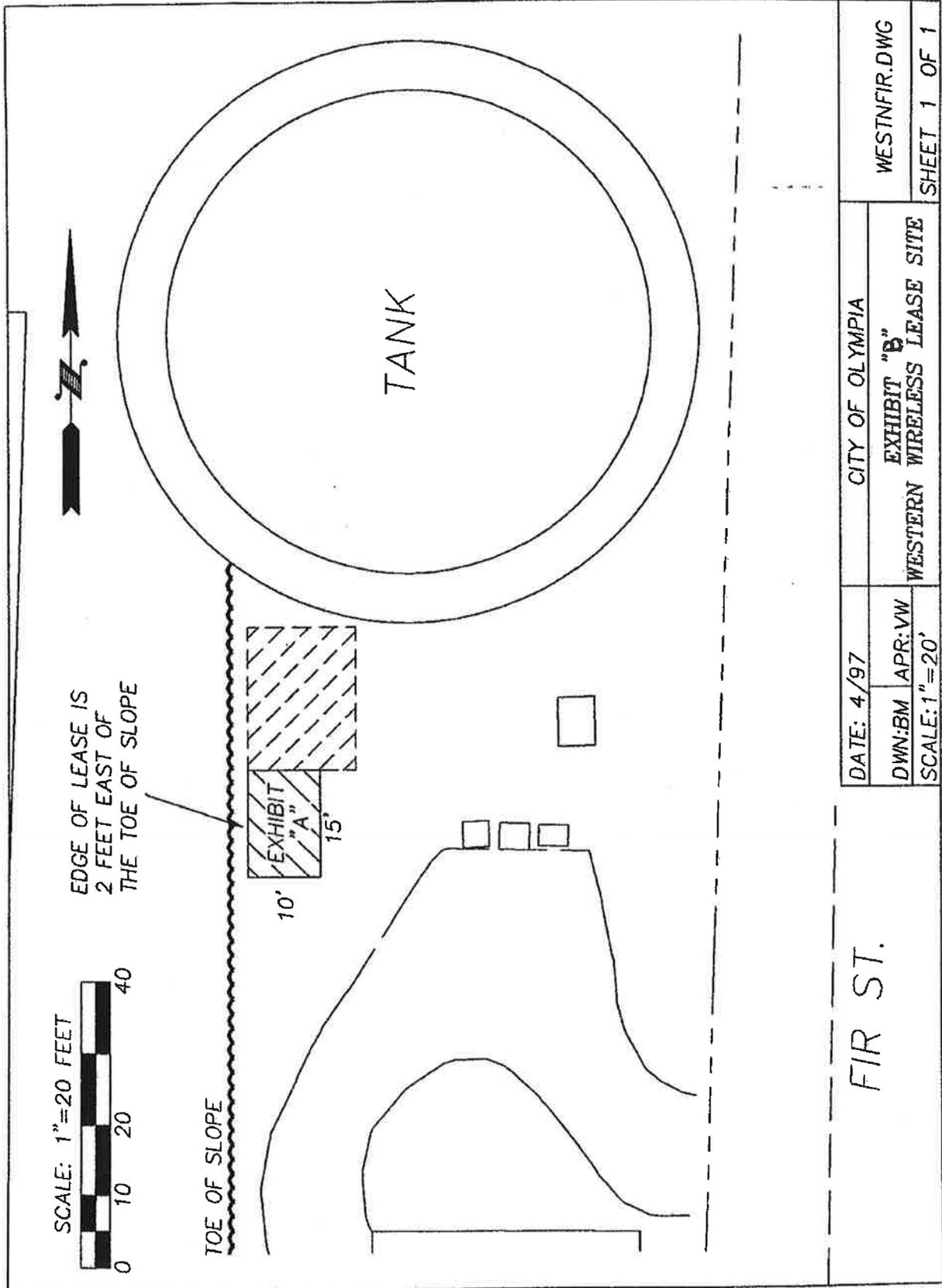
Property Description

LOTS 1 THROUGH 10, INCLUSIVE, BLOCK 11, AND THE VACATED EAST 10 FEET OF MCCORMICK STREET ADJACENT ON THE WEST, AND LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 12, AND THE VACATED EAST 10 FEET OF MCCORMICK STREET ADJACENT ON THE WEST, ALL IN TALCOTT'S SUBDIVISION OF BLOCKS 21 AND 22 OF AYERS ADDITION TO OLYMPIA, AS RECORDED IN VOLUME 4 OF PLATS, PAGE 20.

IN THE COUNTY OF THURSTON, STATE OF WASHINGTON

Exhibit B

Antenna Facilities  
(See Attached)



**LEASE AGREEMENT**

3920 Hoffman Ct  
Olympia, Washington 98501  
SE05026A / Hoffman

This Lease Agreement ("Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Olympia, Lessor, ("Olympia"), and T-Mobile West Corporation, a Delaware corporation, ("Lessee").

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Property, Area, and Antenna Facilities

Olympia hereby grants a nonexclusive lease to Lessee for property located on the following described property situated in Thurston County, State of Washington, with:

That portion of the west half of the east half of the northeast quarter of Section 30, Township 18 North, Range 1 West, W.M., lying entirely within the property described in Real Estate Contract recorded in Volume 887, page 103, Records of Thurston County and more particularly described as follows: Commencing at the southwest corner of said west half of the east half of the northeast quarter; thence N 2° 16' 16" E along the west line west half 1319.49 feet to the southwest corner of the northeast quarter of the northeast quarter; thence continuing N 2° 16' 16" E 263.90 feet to the northwest corner of the previously mentioned property description; thence S 87° 44' 17" E along the north line of said property 661.74 feet to the east line of said west half of the east half of the northeast quarter and the northeast corner of said property and the true point of beginning of this description; thence S 2° 18' 55" W along said east line 294.26 feet; thence N 87° 42' 26" W 146.66 feet; thence N 2° 18' 55" E 294.18 feet to the north line of mentioned property description; thence S 87° 44' 17" E along said north line 146.66 feet to the northeast corner of said property and the true point of beginning of this description.

This shall hereafter be called “the Property”. Provided, however, that Lessee’s use shall be limited as shown on the attached Exhibit A, which shall hereafter be called “the Area.”

## 2. Permitted Use

a. The use of the Area shall be limited to construction, maintenance, repairs, and operation of an electronic equipment shelter and associated equipment on the Property, and wireless antennas, attachments, and cables "Antenna Facilities" used by Lessee. Said items shall be considered equipment and shall be referred to as “Equipment” hereafter. Any other use of said Area shall cancel this Lease.

b. 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 all 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 Area twenty-four (24) hours a day, seven (7) days a week and for utilities necessary to operate the Equipment.

## 3. Compensation.

Beginning September 1, 2012, Lessee shall pay rent (“Rent”) to Olympia in the sum of Eleven Thousand Nine Hundred and Sixty and No/Dollars (\$11,960.00) annually, or Nine Hundred Ninety Six and 67/100 Dollars (\$996.67) per month (“Annual Rent”). Notwithstanding the foregoing, Olympia acknowledges that the previous Lease Agreement executed on March 2, 1998 has expired and Lessee is currently a month-to-month tenant. During the remaining term of this Lease, Rent shall be due and payable monthly in advance on or before the first day of each month. The monthly Rent shall be increased beginning September 1, 2013, and on September 1<sup>st</sup> of each year thereafter by an amount of four percent (4%). Payment shall be made to the Director of Finance and Budget at Olympia City Hall, Olympia, Washington. Any Rent payments received by Olympia after the due date shall include a late payment penalty of Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

two percent (2%) of such Rent for each day or part thereof past the due date. 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 3.36 at the same time as consideration is due under this Lease Agreement. Grantee shall pay Olympia a late payment charge equal to ten percent (10%) of the late payment for any payment not paid when due. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Equipment or Lessee's use of the Property.

#### 4. Disclaimer of Liability and Indemnity.

a. Olympia shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Area or its Equipment, except to the extent that any such injury or damage is due to the negligence or intentional acts of Olympia, its employees, agents or independent contractors.

b. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, employees, from any and all claims, costs, lawsuits (including but not limited to reasonable attorneys fees), damages, actions, or liability whatsoever which may arise from Lessee's use of the Area and Antenna Facilities. The foregoing promise shall include, but not be 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. This obligation shall survive expiration or termination of this Lease.

c. Lessee shall not be responsible for the solely negligent acts or omissions or willful misconduct of Olympia's agents, officers and employees.

d. In the event any action or proceeding shall be brought against a party by reason of any matter for which it is indemnified hereunder, the indemnifying party shall, upon notice from the indemnitee, at the indemnifying party's sole cost and expense, defend the same with legal counsel reasonably selected by the indemnitee; provided however, that the indemnifying party shall not

admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of the indemnitee without the indemnitee's prior written consent.

e. Each party shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this Section. Nothing herein shall be deemed to prevent Olympia from cooperating with Lessee and participating in the defense of any litigation by Olympia's own counsel.

f. Except for indemnification pursuant to this Paragraph 4 and Paragraph 12, neither party shall be liable to the other, or any of their respective agents, representatives, employees 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 (including negligence), strict liability or otherwise.

h. Nothing in the proceeding paragraphs of Section 4 shall be construed to create any additional liability to any third party. Rather the proceeding provisions are solely for the purpose of allocating risk and liability or between the parties to this agreement.

#### 5. Insurance.

While this Lease is in effect or while any Equipment is located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with coverage of Two Million Dollars (\$2,000,000) combined limit. Olympia, its officers, agents, and employees shall be named as additional insured on such policy. Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that the coverage shall not be terminated without thirty (30) days prior written notice to Olympia.

#### 6. Term and Renewal.

The term of this Lease shall commence September 1, 2012 (the "Commencement Date") and shall expire on August 31, 2017, unless sooner terminated as provided herein. This Lease Agreement shall automatically be extended for two (2) additional five (5) year terms unless Lessee terminates its at the end of the then current term by giving Olympia written notice of the

Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

intent to terminate at least six (6) months prior to the end of the then current term. In the event Lessee wishes to renew this Lease at the end of the third (3rd) five (5) year extension term, it shall give notice to Olympia at least one hundred eighty (180) days before its expiration. The decision to renew shall be within the sole but reasonable discretion of Olympia. Notwithstanding anything stated herein to the contrary, Lessee may not renew this Lease, unless it is in full compliance with all terms and conditions contained herein. Unless Lessee wishes to renew this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

7. Breach.

a. In the event Lessee shall violate 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 Agreement. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of such written notice, Olympia may terminate this Lease agreement and reenter the Property upon prior written notice to Lessee. Upon termination of this Lease, Lessee shall return the Property to Olympia in good, useable condition, normal wear and tear excepted. Lessee shall be liable to Olympia for any unpaid annual rent as of the date of termination of the Agreement. Olympia's failure to use remedies provided herein shall not constitute a waiver by Olympia. Olympia may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Olympia with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia shall have 30 days in which to cure any such breach. Lessee's failure to use remedies provided herein shall not constitute 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 Paragraph.

8. Notice.

Any notice required to be given under this Lease shall be deemed given three (3) days subsequent to 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 LESSORS:           City of Olympia  
                          ATTN: Public Works Department  
                          P.O. Box 1967  
                          Olympia, WA 98507-1967

TO LESSEE:            T-Mobile USA, Inc.  
                          12920 SE 38<sup>th</sup> Street  
                          Bellevue, WA 98006  
                          Attn: Lease Compliance/SE05158A

9. Alteration.

Lessee shall not make any alterations, additions, or improvements in the 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 shall not be unreasonably withheld, conditioned or delayed. All alterations, additions, and improvements shall be at the sole cost and expense of Lessee and shall become the Property of Olympia, excluding Lessee's antenna and Equipment, and be surrendered with the Property as a part thereof at the termination of this Lease, without disturbance, molestation, or injury. Olympia will cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Equipment. If Lessee shall perform work in the Property with the consent of Olympia, Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Olympia and any other authorized applicable authority. Lessee shall be liable to Olympia for any damage or loss caused by its Lessee's agents, employees, or representatives to the Property. Lessee shall have the right to alter, replace, enhance and upgrade the equipment at the Area at any time during the term of this Lease with equipment that is of similar or smaller size in share

Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

or number, upon prior written notice to Olympia; provided, however that such changes shall not cause measurable interference with existing facilities or operations at the Property. For other alterations, including but not limited to an increase in the height of the Equipment, increase in the use of ground space on site, or the substitution of substantially larger equipment, Olympia must approve such alterations, with such approval not to be unreasonably withheld, conditioned or delayed.

10. Ownership and Removal of Improvements.

All buildings, landscaping, and all other improvements, except Lessee's Equipment, shall become the property of Olympia upon expiration or termination of this Lease. In the event that Olympia require removal of such improvements and restoration, such removal and restoration shall be accomplished at the sole expense of Lessee and completed within ninety (90) days after receiving notice from Olympia requiring removal of the improvements. In the event Equipment is left upon the Property after expiration or termination of this Lease, they shall become 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 Premises 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.

11. Interference with Other Users.

a. The Equipment that Lessee installs shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently licensed and operating communications equipment of Olympia, other existing tenants on the tower, or at 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 facilities at Lessee's sole expense and without installation of extra filters on Olympia - owned equipment.

b. Upon the Commencement Date, Lessee shall provide written assurance, in a format  
Lease Agreement/ Olympia - T-Mobile West SE05026A - Hoffman WT

reasonable and customarily accepted by the federal government, ensuring that Lessee's Equipment complies with all applicable federal requirements for radio frequency (RF) emissions, and that Lessee's Equipment will not cause measurable interference with the equipment located on the Property.

c. Lessee understands that no use of the Area will be permitted which exceeds federal RF emissions standards at the boundaries of the Area. If the cumulative RF emissions levels ever exceed applicable federal standards, all users of the Area, including Lessee, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

d. Lessee's installation, operation, and maintenance of its Equipment shall not damage or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities at the Property or with such activities of other existing tenants at the Property. Lessee agrees to cease all such actions which materially interfere with Olympia's use of the Area immediately upon actual notice of such interference, provided however, in such case, Lessee shall have the right to terminate the Lease.

e. Olympia do 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, the procedures of this section shall govern to determine whether such antenna or transmission facility will interfere with Lessee's Equipment operations. If Olympia receive any such request, Olympia shall submit a proposal complete with all technical specifications reasonably requested by prospective tenant to Lessee for review for noninterference; however, Olympia shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee shall have 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 shall 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 30 day period and Lessee's objections are verified by Olympia to be valid, then Olympia

Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

shall not proceed with such proposal unless Olympia modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may proceed with and be allowed to 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 Area is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.

12. Hazardous Substances.

Olympia represent 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 such Hazardous Substance on the Property in violation of any applicable law. Lessee represents warrants and agrees that its use of the Area and the Property shall be in compliance with all applicable state and federal environmental laws. Lessee will be 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 such Hazardous Substance(s). Olympia will be 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 12 shall survive the expiration or other termination of this Lease.

13. Assignment; Sublease.

Lessee shall not assign or transfer this Lease Agreement or sublet all or any portion of the Area either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation; nor shall title thereto, either legal or equitable, or any right, interest property therein pass to or vest in any entity without the prior written consent of Olympia, which shall not

Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

be unreasonably withheld, conditioned or delayed; Lessee shall promptly notify Olympia of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Lessee. Any such assignment, transfer, or sublet shall make this Lease subject to cancellation unless, and until Olympia shall have consented thereto. Notwithstanding the foregoing, this Lease shall not be assigned or sublet if Lessee is in violation of any provision thereof. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of Olympia to the Lessee's principal, 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. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

14. Venue.

In the event of suit to enforce the terms and conditions of this Lease, venue shall be in the Superior Court in Thurston County, Washington, Washington law shall apply, and the prevailing party shall be awarded costs and reasonable attorney's fees.

15. Binding of Successors.

This Lease applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Lease.

16. Liens.

Lessee shall not cause or allow any lien to attach to the Property.

17. Termination.

In addition to termination under Section 7 herein, Lessor may terminate this Lease Agreement after written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination. Such termination shall be permitted in the event of bonify Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

threat of public health and safety hazard to the public. Lessee may terminate this Lease with six (6) months written notice. Such termination shall be permitted in the event Lessee wishes to terminate this Lease Agreement at any time for any reason. Lessee shall also be permitted to terminate this Lease with one hundred twenty (120) days written notice in the event that Lessee cannot receive and transmit 360 degrees from the area as defined in Section 1 for reasons beyond Lessee's control. In this event, Lessee shall be entitled to a pro rata refund of Annual Rent less any damages it caused to the Property.

18. Right of Entry.

Olympia's agents, officers, and employees, may enter the Area (excluding the interior of the equipment shelter, unless accompanied by a representative of the Lessee) 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 will 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 Area without notice to Lessee. Olympia shall be liable for any damage to the Equipment caused by Olympia or their duly authorized agents, officers and employees

19. Whole Agreement.

This Lease contains the whole and entire agreement between the parties as to the transaction contained herein. All parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

20. Maintenance and Security.

Olympia has no responsibility for maintenance or for security for the improvements placed upon the Property by Lessee. Lessee shall have the right to install private utilities, at Lessee's expense, and to 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 used on the Property.

Lessee shall, at its own expense, maintain the Area and its Equipment in a safe condition, in good repair and in a manner suitable to Olympia. Additionally, Lessee shall keep the Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any undue vibration, heat or noise. Lessee shall have the responsibility for the maintenance, repair and security of its Equipment and leasehold improvements. Lessee's Equipment shall, at all times, be painted, at Lessee's expense, the same color as the underlying City property to which its Equipment is attached, or other color as the Olympia may specify. Any tree pruning or cutting that is required for installation and/or maintenance of the Area and Equipment shall require Lessee to obtain permission from Olympia, and shall follow best management practices in accordance with City Code.

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 improvements of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and do the maintenance. Olympia will provide Lessee with space on the Property for the relocation of Lessee's Equipment during any such repairs or maintenance and hereby gives Lessee the right to operate a temporary facility on the Property provided such operation does not interfere with Olympia's repairs, maintenance or other use of the Property. Olympia will use its best efforts to speedily take care of any work which requires Lessee to remove or otherwise disable its Equipment.

21. Destruction of Lessee's Property.

Except as otherwise provided herein, this Lease may be terminated by Lessee, without any penalty or further liability immediately upon written notice if the Property or the Equipment are destroyed or damaged by natural causes so as in the reasonable judgment of Lessee to substantially and adversely affect the effective use of the Equipment. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, Olympia shall be entitled to any rent, damages reimbursement and/or fees that may be due, if any, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee, if any. If Lessee

elects to continue this Lease, then all Rent shall abate until the Property is restored to the condition existing immediately prior to such damage or destruction.

22. 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 Property, any such sale, hypothecation, or transfer of all or any portion of the Property shall be made subject to the terms, provisions, and conditions of this Lease.

23. Holding Over.

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month at two times the rent, or two hundred percent (200%) herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

24. Acceptance of Area.

By taking possession of the Area, Lessee accepts the Area in the condition existing as of the Commencement Date. Olympia makes no representation or warranty with respect to the condition of the Area. 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) the 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.

Lease Agreement/ Olympia – T-Mobile West SE05026A – Hoffman WT

25. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. 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 shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

27. Miscellaneous.

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_ 2012

**Approved as to form:**

Darren Nienaber

Darren Nienaber, Deputy City Attorney

**LESSOR  
CITY OF OLYMPIA**

\_\_\_\_\_  
Steve R. Hall, City Manager

**LESSEE  
T-MOBILE WEST CORPORATION**

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

Printed Name: Kautilya Lanba

Title: Regional Director of Engineering and Operations, PNW Region

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2012, before me personally appeared Steve R. Hall, to me known to be the City Manager for the City of Olympia, a municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is 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  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

STATE OF \_\_\_\_\_  
 ) ss.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2012, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_, 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 \_\_\_\_\_.

Exhibit A

## Property Description

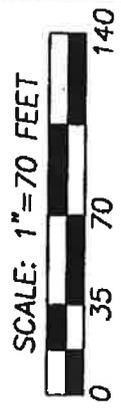
following described property situate in Thurston County, State of Washington, to wit:

That portion of the west half of the east half of the northeast quarter of Section 30, Township 18 North, Range 1 West, W.M., lying entirely within the property described in Real Estate Contract recorded in Volume 887, page 103, Records of Thurston County and more particularly described as follows: Commencing at the southwest corner of said west half of the east half of the northeast quarter; thence N 2° 16' 16" E along the west line of said west half 1319.49 feet to the southwest corner of the northeast quarter of the northeast quarter; thence continuing N 2° 16' 16" E 263.90 feet to the northwest corner of the previously mentioned property description; thence S 87° 44' 17" E along the north line of said property 661.74 feet to the east line of said west half of the east half of the northeast quarter and the northeast corner of said property and the true point of beginning of this description; thence S 2° 18' 55" W along said east line 294.26 feet; thence N 87° 42' 26" W 146.66 feet; thence N 2° 18' 55" E 294.18 feet to the north line of mentioned property description; thence S 87° 44' 17" E along said north line 146.66 feet to the northeast corner of said property and the true point of beginning of this description.

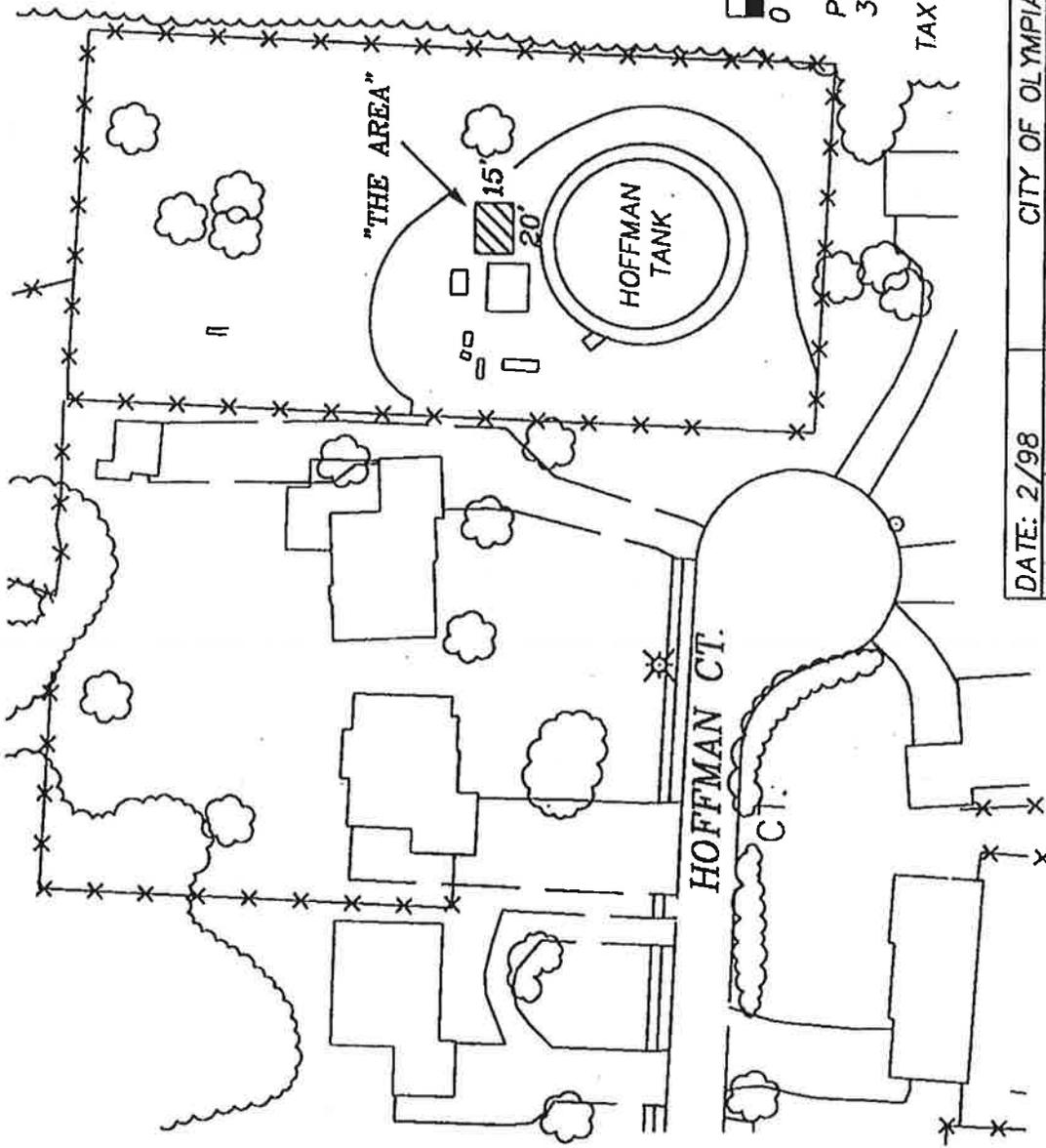
Exhibit B

Antenna Facilities  
(See Attached)

NOTE:  
 LOCATION OF LEASE  
 ("THE AREA") IS TO  
 BE FIELD DESIGNED  
 BY THE OLYMPIA CITY  
 ENGINEER OR HIS  
 REPRESENTATIVE.



PROPERTY ADDRESS:  
 3920 HOFFMAN CT.  
 TAX PARCEL #: 11830110301



DATE: 2/98		CITY OF OLYMPIA	
DWN:BM	APR:VW	HOFFMAN TANK	
SCALE: 1"=70'			
		HOFFMAN.DWG	
		SHEET 1 OF 1	