

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
201903012

Originating Department:	Public Works / Equipment Services Division
Division/Program: <i>(i.e. Dept. Division and Program)</i>	9010/901000 (Public Works Administration)
Contract or Grant Administrator:	Eric L. Schlehuber, Equipment Services Manager
Contractor's / Agency Name:	Mt. Constitution Sites, Inc.
Is this a New Contract?      If not, is this an Amendment or Renewal to an Existing Contract?      Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal (per WCC 3.08.100(a)), Original Contract # _____	
Does contract require Council Approval?      Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC _____ Already approved? Council Approved Date: _____      (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s) _____      CFDA # _____	
Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, associated Whatcom County grant contract number(s) _____	
Is this contract the result of a RFP or Bid process?      Contract _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s) _____      Cost Center: <u>10895</u>	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form. <b>If yes, indicate exclusion(s) below:</b> <input type="checkbox"/> Professional services agreement for certified/licensed professional <input type="checkbox"/> Contract work is for less than 120 days <input checked="" type="checkbox"/> Contract less than \$100,000 <input type="checkbox"/> Contract for Commercial off the shelf items (COTS) <input type="checkbox"/> Contract work is all performed outside U.S. <input type="checkbox"/> Work related subcontract less than \$25,000 <input type="checkbox"/> Interlocal Agreement (between Govt's) <input type="checkbox"/> Public Works – Local Agency/Federally Funded FHWA	
Contract Amount:(sum of original contract amount and any prior amendments) \$ <u>17,655.05</u> This Amendment Amount: \$ <u>0.00</u> Total Amended Amount: \$ <u>17,655.05</u>	Contracts that require Council Approval (incl. agenda bill & memo) <ul style="list-style-type: none"> <li>• Professional Services Agreement above \$20,000.</li> <li>• Bid is more than \$50,000.</li> <li>• Amendments that have either an increase greater than 10% or provide a \$10,000 increase in amount (whichever is greater)</li> </ul> RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.
Summary of Scope: Request authorization for the County Executive to enter into a contract between Whatcom County and Mt. Constitution Sites, Inc, to provide for the Mt. Constitution radio tower lease, in the amount of \$17,655.05.	
Term of Contract: five years with three, five year extensions; this agreement is for years one through five.	Expiration Date: December 31, 2023

- Contract Routing Steps & Signoff: *sign or initial*
1. Prepared by: Tammy Iddings
  2. Attorney reviewed: Christopher Quinn
  3. AS-Finance reviewed: Brad Bennett
  4. IT reviewed if IT related: \_\_\_\_\_
  5. Corrections made: \_\_\_\_\_
  6. Attorney signoff: \_\_\_\_\_
  7. Contractor signed:
  8. Submitted to Exec Office:
  9. Council approved (if necessary):
  10. Executive signed:
  11. Contractor Original Returned to dept:
  12. Original to Council:

- Indicate date transmitted
- |      |                   |
|------|-------------------|
| Date | <u>02/25/19</u>   |
| Date | <u>03/06/2019</u> |
| Date | <u>03/07/19</u>   |
| Date | _____             |
| Date | _____             |
| Date | _____             |
| Date | <u>3/7/19</u>     |
| Date | <u>3/19/19</u>    |
| Date | <u>3.26.19</u>    |
| Date | <u>3.27.19</u>    |
| Date | <u>3-27-19</u>    |
| Date | <u>4-5-19</u>     |

PROPERTY LEASE AGREEMENT  
TWO-WAY RADIO COMMUNICATION SYSTEM/TOWER  
BETWEEN WHATCOM COUNTY  
AND MT. CONSTITUTION SITES, INC.

Whatcom County Contract No.

201903012

THIS LEASE is made and entered into effective the 1<sup>st</sup> day of January, 2019, by and between MT. CONSTITUTION SITES, INC., a Washington corporation (“MCSI”), and WHATCOM COUNTY (“Lessee”). This Lease shall, effective as of the Commencement Date, supersede and replace any Prior Lease in its entirety, and the Prior Lease shall be and become null and void as of such date. In the event this Lease is not fully executed by both MCSI and Lessee, the Prior Lease shall remain in full force and effect.

In consideration of the covenants and agreements herein contained, MCSI leases to Lessee, and Lessee leases from MCSI, certain specified portions of a tower and space for equipment and other property (“Premises”) situated or to be situated on property of MCSI, located on Orcas Island, San Juan County, Washington (“Property”), for the term and under the following provisions:.

1. **PROPERTY.**

The real property (“Property”) of which the Premises are a part, is legally described as follows:

That portion of the West half of the Southeast quarter and the East half of the Southwest quarter, Section 20, Township 37 North, Range 1 West W.M., EXCEPTING existing county roads and power line easements, described as follows: Commencing at the Northeast corner thereof, thence Westerly along the Northerly line thereof 1000 feet; thence Southerly at right angles to the Northerly line 1000 feet; thence Easterly to the Easterly line thereof 1000 feet; thence Northerly along the Easterly line thereof to the point of beginning.

Situate in San Juan County, Washington.

2. **PURPOSE AND USE.**

a. Purpose. The Premises shall be used by Lessee for the purpose of 2-way radio communications.

b. Equipment. Attached as Exhibit “A” is a list of the equipment installed or to be installed and the location of the equipment on the Premises, including the identified tower structure and the specific location within the designated communications building.

c. Other Equipment. In order to enable Lessee to carry out this purpose, Lessee may construct improvements and install equipment reasonably required by Lessee for this purpose, so long as not inconsistent with other provisions of this Lease. Those improvements and equipment may include, but are not limited to antenna(e), structures to house equipment, electrical meters, electrical generators, coaxial transmission lines, transmitters, receivers, accessory devices, an enclosure for such improvements, and all other equipment, supplies or materials relating to or reasonably appurtenant to the equipment and consistent with Lessee’s purpose.

d. “Communications Equipment” Defined. All of the property set forth in Subparagraphs b. and c. shall

collectively be referred to as the "Communications Equipment." Lessee, or its contractors, agents or employees may replace, repair, modify and remove the Communications Equipment as necessary in accordance with the purposes set forth herein. The installation or construction of the original or any additional Communications Equipment must be approved in advance by MCSI. Any work shall be subject to the supervision and control of MCSI. Prior to the time Lessee installs or constructs any Communications Equipment, detailed plans and specifications shall first be provided to MCSI for MCSI's approval. Approval shall not be unreasonably withheld, conditioned or delayed. The addition or modification of Communications Equipment may affect the rent and that determination shall, likewise, be made in advance of the commencement of the work.

### 3. **TERM.**

a. **Initial Term.** The Initial Term ("Initial Term") shall be for a period of five (5) years, commencing January 1, 2019 (the "Commencement Date"). Subject to the renewal provisions in Subparagraph 3(b), this Lease shall terminate one day before the fifth (5th) anniversary of the Commencement Date. Lessee's obligation to pay rent shall begin on the Commencement Date.

b. **Extended Terms.** Lessee shall have the right to extend the Initial Term for three (3) additional periods of five (5) years each ("Extended Terms") on the same terms and conditions as set forth herein, except for an adjustment in rent. Each Extended Term shall commence immediately upon the termination of the previous Term unless Lessee gives written notice to MCSI of its intent not to exercise its right to an extension of this Lease. Notice of intent not to extend shall be provided not less than one hundred eighty (180) days prior to the expiration of the then current Term.

c. **"Term" Defined.** The Initial Term and any Extended Term are alternately or collectively referred to as a "Term."

d. **Holding Over.** If, after the end of a Term for which there is no extension, or an extension does not occur by operation of this Lease or agreement of the parties, Lessee remains in possession of the Premises, at the sole option of MCSI, Lessee shall become a tenant on a year-to-year basis on the same terms and conditions of this Lease, except with regard to rent. Annual rental thereafter shall be adjusted utilizing the Consumer Price Index as described in Paragraph 4(b).

### 4. **RENT.**

a. **Initial Term.** During the Initial Term Lessee shall pay to MCSI the annual sum of Three Thousand Five Hundred Thirty-One Dollars and 01/100s (\$3,531.01), in advance on the first day of January of each year commencing on the Commencement Date at the address designated in Paragraph 26.

b. **CPI Adjustment.** On the first anniversary of the Commencement Date, and annually thereafter on the same date during the Initial Term, the rent shall be adjusted by an amount which is the equivalent of the rent for the most recent period, adjusted by the same percentage of increase as the revised Consumer Price Index for All Urban Consumers, Seattle-Tacoma-Bremerton Area, as published by the United States Department of Labor, Bureau of Labor Statistics, the base date being the June preceding the Commencement Date, and the rent adjustment shall then be based on the Index data available for the month of June preceding the anniversary of the Commencement Date. If

the cited Index is discontinued or revised during the Initial Term, or an Extended Term, another governmental index or computation shall be used in order to obtain substantially the same result as would be attained if the Index had not been discontinued or revised. In no event shall the rent for any succeeding year be less than the rent for the preceding year.

c. Extended Terms. Upon the commencement of each Extended Term, the rent shall be adjusted by reference to the Consumer Price Index as set forth in Subparagraph (b) of this Paragraph 4, effective as of the anniversary of the Commencement Date.

d. Continued Annual Adjustment of Rent. Annually thereafter for the duration of the Extended Term, the rent shall be adjusted by reference to the Consumer Price Index as set forth in Subparagraph (b) of this Paragraph 4, effective as of the anniversary of the Commencement Date.

e. Increased Costs Associated With Lease. To the extent that Lessee's property associated with this Lease shall cause real property taxes or assessments to increase; or to the extent that the costs of any common utilities or services increase as a result of this Lease; or to the extent that the cost of premiums for hazard insurance procured by MCSI with regard to operations on the Property described in Paragraph 1 increase by virtue of risks associated with Lessee's use of the Premises, all such expenses shall be charged pro rata to Lessee, and shall be payable to the extent of one-twelfth (1/12) the annual cost thereof and shall be payable with and as a part of the rent set forth in this Paragraph 4. Provided, nothing set forth in this Paragraph 4, e. shall authorize a use or business on the part of Lessee which is inconsistent with the other terms of this Lease or which is otherwise illegal.

f. Late Payment. In the event the rent required to be paid hereunder is not received by MCSI on or before the tenth (10th) day of the month for which rent is due, there shall be imposed and Lessee shall pay an additional sum equal to five percent (5%) of the rent and, in addition, the delinquent rent shall accrue interest at the rate of eighteen percent (18%) per annum, retroactive to the first day of the month for which such rent is due and unpaid. This obligation is in addition to the rights of MCSI as set forth in Paragraph 17, and does not constitute an election of remedies.

5. **NONEXCLUSIVITY**.

The rights of Lessee are not exclusive and are subject to the rights of MCSI and other existing or future tenants of the Property, but as to any future tenants, those rights shall be subject to the terms of this Lease.

6. **ACCESS**.

MCSI grants Lessee and Lessee's designees the right of ingress and egress to the Property and the Premises at all times, to install, inspect, maintain, service, repair, replace, upgrade or to add Communications Equipment and utility services. The route of access over the access easement and Property shall be of sufficient width and configuration to permit Lessee to properly operate its business in accordance with the purpose and use set forth in Paragraph 2, subject to interruptions beyond the control of MCSI.

7. **LIABILITY FOR INJURY OR DAMAGE TO LESSEE OR THIRD PARTY.**

MCSI shall not be liable for any accident or injury to property or persons occurring in or about the Property or Premises which are caused by or arise out of any negligence, breach of contract, or other use of the Premises, on the part of Lessee or its agents, employees or other persons on or about the Property or Premises at the instance of Lessee, and Lessee shall hold MCSI harmless therefrom and defend MCSI against any claim so arising.

8. **LIABILITY FOR CASUALTY DAMAGE TO PROPERTY.**

MCSI shall not be liable for any damage to the equipment or property of Lessee resulting from fire or other casualty in or about the Premises or from any other cause not resulting from the negligent acts or omissions of MCSI, its agents, employees or contractors.

9. **INDEMNIFICATION.**

MCSI and Lessee each agree to indemnify the other against and hold the other harmless from any and all costs (including reasonable attorney's fees) and claims of liability or loss which arise under this Lease as a result of the acts or omissions of the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party.

10. **LIABILITY INSURANCE.**

Lessee shall, during the term hereof, at its own expense, maintain, keep in effect, and furnish and deliver to MCSI certificates evidencing comprehensive general liability and property liability insurance policies in such form and with an insurer satisfactory to MCSI, insuring both MCSI and Lessee against all liability for damages to persons or property on or about the Property or Premises which may arise by reason of the installation and maintenance of the Communications Equipment and the use of the Premises by Lessee. The liability limits for the insurance shall be not less than One Million Dollars (\$1,000,000.00) for injury to or death to one or more persons in any one occurrence, and Five Hundred Thousand Dollars (\$500,000.00) for damage to or destruction of property in any one occurrence. Attached Exhibit "B" is Certificate of Membership in the Washington Counties Risk Pool.

11. **RELEASE OF LIABILITY AND WAIVER OF SUBROGATION.**

MCSI and Lessee each release the other from any and all liability or responsibility to the other or anyone claiming by, through or under them by way of subrogation, for any injury or damage sustained by MCSI, Lessee or any third parties; provided, however, that this provision shall be applicable and in force and effect only with respect to loss, damage or injury occurring during the time insurance policies of MCSI and Lessee contain a clause or endorsement to the effect that any release shall not adversely affect or impair the policies or prejudice the right of the releasing party to recover thereunder. MCSI and Lessee agree that their policies will include that type of clause or endorsement and, further provided, that this provision shall be binding on the waiving party only so long as the other party is in compliance with its obligation to maintain this insurance.

12. **MCSI'S COVENANTS.**

MCSI covenants and agrees to and with Lessee as follows:

a. Title and Quiet Possession. MCSI represents, warrants and covenants to Lessee as follows: (1) MCSI is seized with good, marketable and fee simple title to the Premises and to any areas of the Property containing easements or rights of access as provided for in Paragraph 6; (2) any encumbrances that may exist on the Property or the Premises will not interfere with Lessee's intended use of the Premises; (3) Lessee is possessed of a valid leasehold estate in the Premises and Lessee shall have quiet and peaceful enjoyment of the Premises at all times during this Lease; and (4) MCSI will at all times during the term of this Lease defend title to the Property and Premises against all claims.

b. Maintenance and Repairs. MCSI shall be responsible for proper maintenance of the tower and any other of its improvements on the Property which are used by Lessee for the purpose set forth in this Lease. MCSI covenants that the tower and other improvements will be maintained in good condition and repair.

c. Environmental Laws. MCSI makes the following representations and warranties to Lessee:

i) MCSI has obtained all permits, licenses, or authorizations, if any, which are required under Environmental Laws, as defined below, with respect to the Property, including the Premises, and to the best of its knowledge, is in compliance in all material respects with same.

ii) MCSI is not aware of, and has not received notice of, the presence of Hazardous Substances on the Property, including the Premises.

iii) There is not pending or threatened against MCSI (and MCSI knows of no circumstances that might give rise to) any civil, criminal or administrative action, or claim relating in any way to Environmental Laws with respect to the Property.

As used herein the following terms shall have the following meanings: "Environmental Laws" shall mean all federal, state and local laws relating to pollution or protection of the environment. "Hazardous Substances" shall mean any pollutant, contaminant, hazardous or dangerous waste, substance or material regulated or controlled pursuant to any Environmental Law.

d. Marking and Lighting Requirements. MCSI, with regard to MCSI's towers, buildings and other improvements, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC"). MCSI shall indemnify and hold Lessee harmless from any fines or other liabilities caused by MCSI's failure to comply with these requirements.

13. **LESSEE'S COVENANTS.**

Lessee covenants and agrees to and with MCSI as follows:

a. Limited Purpose. Not to engage in any business on the Premises, except as set forth in Paragraph 2;

b. Nuisance/Legal Compliance. To make no unlawful, improper or offensive use of the Property or Premises, or any part thereof, and to comply with all the laws, rules and regulations of federal, state, county, city or other governmental subdivision which may have rules, regulations, ordinances, statutes or laws pertaining to the conduct of Lessee 's business;

c. Waste. Not to commit or suffer any waste upon the Property or Premises;

d. Avoidance of Mechanic's or Materialman's Liens. Not to permit any liens authorized by Chapter 60.04 RCW to attach to the Property or Premises; and

e. Termination. At the end of the last Term or upon any sooner termination of this Lease, to quit and deliver up the Premises to MCSI peaceably and quietly, and in as good order and condition, excepting reasonable use and wear thereof, as the same now are or may hereafter be put into during any Term.

14. **INTERFERENCE BY LESSEE**.

All expense of correcting pattern distortions, intermodulation and other interference to existing tenants caused by installation or use of the Communications Equipment shall be the obligation and at the expense of Lessee. In the event of any interference, the following conditions shall apply:

a. Incidental Interference. As used herein, "Incidental Interference" refers to interference with the signal of another existing lessee or lessees of MCSI which affects the quality of a signal, without significantly disrupting that lessee's operations. In the event that MCSI determines that Lessee's equipment or use of the Communications Equipment is the cause or likely cause of interference, Lessee shall have a period of thirty (30) days of MCSI's transmittal of written notice to Lessee, as provided in Paragraph 26, to correct the interference.

b. Substantial Interference. As used herein, "Substantial Interference" means interference that interrupts the signal of another of MCSI's existing lessees to an extent that the lessee's signal is not received or is so distorted as to be incomprehensible. In the event MCSI determines that Lessee's equipment or the use of the Communications Equipment is a cause or likely cause of the interference, then Lessee shall, within three (3) days after MCSI's transmittal of written notification to Lessee correct the interference. Irrespective of Paragraph 26 ("Notice"), MCSI may notify Lessee of an event of Substantial Interference by any means best suited to the urgency of the problem, including telephonic or facsimile notice which shall be directed to Lessee at the address or location set forth in Paragraph 26, or to any agent designated by Lessee as the recipient of the notice.

c. Cooperation. Lessee agrees to cooperate with MCSI and other lessees of MCSI to correct either Incidental or Substantial Interference, including the determination of any other factors which might have caused or contributed to the interference. In the event that another lessee of MCSI may have contributed to the interference, MCSI shall insist upon correction of factors contributing to the interference on the part of any other lessee.

d. Termination of Operations. If any pattern distortions, intermodulation or other signal

interference cannot be corrected within the period of time set forth above, pertinent to the degree of interference, then Lessee shall terminate its operation until corrections are made. Lessee further agrees to hold MCSI harmless from any claim made by any other lessees or third persons affected or damaged by pattern distortions, intermodulation or other signal interference caused by Lessee.

15. **INTERFERENCE WITH LESSEE.**

e. Lessee shall be protected from pattern distortions, intermodulation and other interference caused by lessees and other users of any of MCSI's towers whose original leasehold arises subsequent to that of Lessee, in the manner and as required of Lessee in the preceding Paragraph 14, except with regard to leases with governmental agencies which have terms inconsistent with Paragraph 14 or with reference to which law or regulations otherwise require. Provided, however, that Lessee shall be responsible for keeping its equipment to good, current engineering standards. MCSI makes no guarantees against pattern distortion, intermodulation or any other interference by prior existing lessees. Although it is understood that MCSI shall not be responsible for any interference to Lessee from existing equipment located on the Property, MCSI will cooperate in the solution of the problems, to the extent reasonable, but no expenses necessary to resolve the interference shall be borne by MCSI.

16. **DEFAULT AND REMEDIES UPON DEFAULT - IN GENERAL.**

If Lessee shall fail to keep and observe any of the covenants, terms and conditions of this Lease, except with regard to default in payment of rent as provided in Paragraph 17 and except as provided in Paragraph 15 with regard to interference by Lessee, then MCSI may, at any time after giving Lessee thirty (30) days' written notice specifying any default and referring to the part of this Lease relied on by MCSI, and if Lessee does not proceed with reasonable diligence and in good faith to cure any default specified in the notice, then MCSI may enter into or upon the Premises or any part thereof, repossess the Premises, and expel Lessee and those claiming under it, and remove its or their property and effects, without being deemed to have committed a trespass, and without prejudice to any other remedies which might otherwise be available at law or in equity for collection of arrears of rent, or other proceeding for breach of covenant or agreement. The exercise of any remedy by MCSI shall not constitute a termination of this Lease or Lessee's obligation hereunder.

17. **REMEDIES UPON DEFAULT OF RENT.**

In the event of any failure by Lessee to pay the rent in full and strictly in accordance with and at the time required by this Lease, at the option of MCSI by notice, given in the manner required by Paragraph 26, this Lease and all of Lessee's rights thereunder may be forfeited and MCSI may retake possession of the Premises, subject to the rights of bona fide third party encumbrancers, making the property of Lessee available to it after a reasonable time, provided all rental to the end of the current Term of this Lease has been paid in full and all other obligations of Lessee to MCSI are satisfied. The exercise of any remedy by MCSI shall not constitute an election of remedies. MCSI shall have any and



all other rights or remedies as may be provided at law or in equity, except as may be inconsistent with this Lease.

18. **UTILITIES.**

Lessee shall be responsible for the expense of installation and payment of all charges related to utilities or other services required by its use of the Premises.

19. **ASSIGNMENT.**

Lessee may assign its leasehold in the Premises, without notice to or the prior consent of MCSI, to any entity controlling, controlled by or under common control with Lessee (so long as the assignee is fully operational, properly staffed and has assets, equity and liquidity appropriate to the lease purpose), or to any entity that acquires substantially all of the assets of Lessee, provided that, in all instances the assignee assumes all of Lessee's obligations under this Lease. As to any other assignee, the consent of MCSI shall be required, but shall not be unreasonably withheld, conditioned or delayed. Except as provided in this Paragraph 19, should MCSI determine that any proposed assignee is not creditworthy or is not sufficiently experienced in the conduct of the business operated under this Lease, the refusal of MCSI to consent to the assignment shall not be deemed unreasonable. In any event, assignment of Lessee's interest hereunder shall not relieve Lessee of any obligations set forth in this Lease.

20. **DESTRUCTION AND RECONSTRUCTION.**

In the event the Premises and any improvements thereon are destroyed or damaged to an extent so as to render the Premises untenable, or practically so, in the sole judgment of MCSI, then MCSI may, at its option, cancel this Lease after giving Lessee sixty (60) days' written notice after the date of destruction or damage of MCSI's intent to cancel this Lease. Whether the Premises are wholly untenable or not, MCSI may promptly proceed to rebuild and restore the Premises and improvements. In that event, MCSI shall, in writing, notify Lessee of its intention to do so within sixty (60) days after the destruction or damage, either partial or whole, and during the period of rebuilding and restoration the rent shall be abated in such proportion as Lessee 's use of the Premises is diminished. In the event of the election of MCSI to terminate this Lease, all rights and liabilities with respect to the unexpired portion of the Term shall cease and any unearned rent shall be refunded to Lessee. Thereupon the rights, duties and obligations of the parties as otherwise set forth herein with regard to termination shall be in effect.

21. **EMINENT DOMAIN.**

In the event the Property or the Premises or a significant portion of the Property or the Premises is subject to a taking by a public entity or agency under the law of eminent domain, or a sale thereof under threat of public taking, such that substantial interference with the purpose of this Lease results, this Lease shall terminate upon the date of transfer of possession to the public entity or agency. In

that event, MCSI and Lessee shall each be entitled to receive and retain separate awards or portions of lump sum awards as may be allocated to their respective interests in the Property or Premises.

22. **IMPROVEMENTS BY LESSEE.**

Except as otherwise agreed by prior or contemporaneous written agreement, Lessee shall not be entitled to any compensation from MCSI for any improvements made by it to the Property or Premises.

23. **FIXTURES/COMMUNICATIONS EQUIPMENT.**

Notwithstanding any contrary provision of law, MCSI agrees that the Communications Equipment placed on the Premises by Lessee shall remain the exclusive personal property of Lessee, shall not be considered to be affixed to the Property and shall be removed by Lessee as provided herein. Upon removal by Lessee of any of its fixtures or other property, Lessee shall restore the Premises to the condition appertaining prior to the installation or placement of those fixtures or other property, ordinary wear and tear excepted.

24. **CONSENTS AND APPROVALS.**

Lessee shall apply for all governmental approvals and other permits and authorizations which are required for the construction, installation and operation of the Communications Equipment and Lessee's business. MCSI agrees to cooperate with Lessee in all respects in connection with those efforts. All applications shall be made by Lessee at the sole cost and expense of Lessee, and Lessee agrees to indemnify and hold MCSI harmless from any cost, obligation or liability arising therefrom. MCSI may refuse to cooperate if MCSI deems that its cooperation is inconsistent with this Lease or other rights reserved to MCSI and any of its tenants, or the character of anticipated tenants.

25. **SIGNS.**

Lessee shall not place any signs upon the Premises without the prior approval of MCSI, but consent shall not be unreasonably withheld, conditioned or delayed.

26. **NOTICES.**

Except as provided in Paragraph 14, all notices must be in writing and shall be delivered by hand, by national overnight express delivery service, by U.S. registered or certified mail, return receipt requested, postage prepaid, or by facsimile to the addresses set forth below:

LESSEE:

MCSI:

Whatcom County  
901 W. Smith Road  
Bellingham, WA 98226  
Attn: Eric Schlehuber

Mt. Constitution Sites, Inc.  
1050 Larrabee Ave., #104-800  
Bellingham, WA 98225  
Attn: Rob Coulthurst

Any notice or other communication mailed as provided above shall be deemed effectively given: (a) on the date of delivery, if delivered by hand; (b) on the date mailed, if sent by overnight express delivery, U.S. mail; or (c) upon transmittal of facsimile.

27. **IMPLEMENTATION.**

The parties agree to cooperate with each other in executing any and all documents necessary or appropriate in order to implement this Lease or the uses and purposes enumerated.

28. **JURISDICTION AND VENUE.**

Jurisdiction of any action brought under this Lease shall be in the Superior Court in the State of Washington and the procedural and substantive law of the State of Washington shall apply to any action. The venue of any action shall be San Juan County, Washington.

29. **ATTORNEY'S FEES AND COURT COSTS.**

In the event either party is required to engage an attorney to enforce or interpret its rights under this Lease, the prevailing party shall be entitled to reasonable attorney's fees and costs of suit.

30. **BINDING EFFECT.**

This Lease shall be binding on the parties' successors, provided that this paragraph shall not be construed to negate any restrictions on assignment otherwise set forth herein.

31. **INTEGRATION.**

This Lease and any attached exhibits constitute the entirety of the Lease Agreement between the parties. No prior written agreement or communication or any oral representations shall be binding, except to the extent this Lease (in substantially similar form) is appended and incorporated as part of such written agreement. This Lease shall not be amended except in writing and signed by authorized representatives of both parties.

32. **COUNTERPARTS.**

This Lease may be executed in counterparts, each of which shall be considered an original and all of which together shall constitute one instrument.

33. **TIME OF THE ESSENCE.**

Time is of the essence of this Lease.

34. **AUTHORITY.**

Each party represents to the other that it has full right and authority to enter into this Lease, and that the individual signing on behalf of each party is authorized to bind the entity for which he or she signs this Lease.

The parties have caused this Lease to be signed by the respective person on the date and year set forth above.

**LESSOR:**

MT. CONSTITUTION SITES, INC.

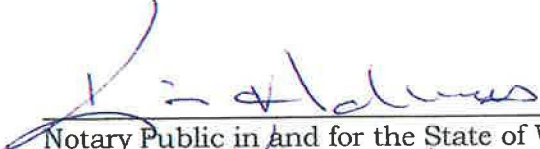
By:   
Rob Coulthurst, Vice President

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF WHATCOM )

On this 7<sup>th</sup> day of March, 2019, before me personally appeared **Rob Coulthurst** to me known to be the Vice President of **Mt. Constitution Sites, Inc.**, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed thereto to the corporate seal of said corporation.

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



  
Notary Public in and for the State of Washington  
Print name: Kristi Harkness  
My commission expires: 10-13-2019

**LESSEE:**

Whatcom County

**For Whatcom County:**

**Recommended for Approval:**

By: Jon Hutchings 3/11/19  
Jon Hutchings  
Public Works Director

**Approved as to Form:**

By: Christopher Quinn 3/14/19  
Christopher Quinn  
Senior Deputy, Whatcom County

**Approved:**

By: Jack Louws  
Jack Louws  
County Executive

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF WHATCOM )

On this 27<sup>th</sup> day of March, 2019, before me personally appeared **Jack Louws**, to me personally know to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.



Suzanne M. Mildner  
Notary Public in and for the State of Washington  
Print name: Suzanne M. Mildner  
My commission expires: 12-31-22

EXHIBIT A

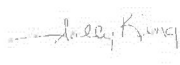
LEASE  
Between  
Mt. Constitution Sites Inc.  
And  
WHATCOM COUNTY ROAD DEPARTMENT

WHATCOM COUNTY ROAD DEPARTMENT will be operating a two-way radio repeater in the Public Safety 150 Mhz band. One cabinet will be installed in the Communications Building at Mt. Constitution with receiver and transmitter connected through their duplexer to an antenna owned by NW Communications, Inc. at the 150 foot level.

Transmit Frequency	150.995 Mhz
Receive Frequency	156.180 Mhz
Call Sign	WPZR339
Service Company	NW Communications, Inc.

EXHIBIT B

LEASE  
Between  
Mt. Constitution Sites Inc.  
And  
WHATCOM COUNTY ROAD DEPARTMENT

CERTIFICATE OF MEMBERSHIP IN THE WASHINGTON COUNTIES RISK POOL	
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE JOINT SELF-INSURANCE LIABILITY COVERAGE AFFORDED BY THE WASHINGTON COUNTIES RISK POOL	
<b>MEMBER COUNTY:</b> <b>Whatcom County, Washington</b> Attn: George Roche, DPA, County Claims Administrator Karen Goens, HR Manager 311 Grand Ave Bellingham, WA 98225	<b>Liability Coverage Afforded by the:</b> Washington Counties Risk Pool 2558 R W Johnson Rd SW, Suite 106 Tumwater, WA 98512-6103
Whatcom County (the "County") is a member of the Washington Counties Risk Pool (the "Pool"), as authorized by RCW 48.62.031, and the County is covered by the Pool's Joint Self-Insurance Liability Program. The Pool's Joint Self-Insurance Liability Program was created by interlocal cooperative agreement amongst the Pool's member counties to share risks by "Jointly, self-insuring" certain third-party liabilities. The Pool is <b>NOT</b> an insurance company. Claims that are covered under a Memorandum of Liability Coverage ("MLC") from the Pool and were submitted under Chapter 4.96 RCW ("Actions against political subdivisions, municipal and quasi-municipal corporations") against the County, its employees, officers, volunteers and agents and/or actions in connection with or incidental to the performance of an agreement/contract which the County and/or its officers, employees or volunteers are found to be liable for will be paid by the Pool and/or the County.	
<b>MLC NUMBER:</b> <b>MLC EFFECTIVE DATE:</b> <b>MLC EXPIRATION DATE:</b> <b>LIMITS OF LIABILITY EACH OCCURRENCE</b> <b>BLAND PD COMBINED:</b>	<b>20182019RISKPOOL-WCCO</b> October 1, 2018 October 1, 2019 \$10,000,000
<b>TYPES OF LIABILITY</b> <b>COVERAGE AFFORDED:</b>	
<p style="text-align: center;"><u>General Liability</u></p> <p style="text-align: center;">Including:</p> <ul style="list-style-type: none"> <li>Bodily Injury</li> <li>Personal Injury</li> <li>Property Damage</li> <li>Errors and Omissions/Professional</li> <li>Advertising Injury</li> </ul> <p style="text-align: center;"><u>Automobile Liability</u></p>	
DESCRIPTION OF OPERATIONS/LOCATION/VEHICLE	CANCELLATION
Public Works Mt. Constitution County Radio Communications Tower Lease WC #200903022-1 (expires 12/31/18) During the MLC Period 10/1/18 - 10/1/19	SHOULD THE ABOVE DESCRIBED MLC BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUER WILL ENDEAVOR TO PROVIDE THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION NOR LIABILITY OF ANY KIND UPON THE ISSUER OR ITS AGENTS OR REPRESENTATIVES.
<b>CERTIFICATE HOLDER:</b>	<b>ISSUE DATE:</b> September 7, 2018
Mt. Constitution Sites, Inc. Attn: Rob Coulthurst 1050 Larrabee Ave #104-800 Bellingham, WA 98225	 Jody King Claims Assistant




MEMORANDUM


RECEIVED

MAR 19 2019

JACK LOUWS  
COUNTY EXECUTIVE

**TO:** The Honorable Jack Louws, County Executive  
Honorable Member of the Whatcom County Council

**THROUGH:** Jon Hutchings, PW Director 

**FROM:** Eric L. Schlehuber, PW Equipment Services Manager 

**RE:** Property Lease Agreement – Two-Way Radio Communication (Radio Tower)  
Mt. Constitution Sites, Inc. (MCSI)

**DATE:** March 8, 2019

▪ **Requested Action**

Enclosed for your review and approval are two original property lease agreement between Whatcom County Public Works and Mt. Constitution Sites, Inc. (MCSI).

▪ **Background and Purpose**

This lease agreement is for the usage of real property for two-way radio communication (radio tower). The property lease includes the option of extending this lease for up to three renewals (for a period of five years each) for a total of potentially twenty years on this agreement. This will cover the period from January 1, 2019 through December 31, 2023.

▪ **Funding Amount and Source**

This is a budgeted expenditure, which was budgeted and approved during the 2019-2020 Budget process.

The rental rate shall be adjusted annually by an amount which is equivalent to the rent for the most recent period and adjusted by the same percentage of increase as the revised Consumer Price Index (CPI) for all urban consumers in the Seattle/Tacoma/Bremerton area.

▪ **Differences from Previous Contract**

This property lease will be January 1, 2019 through December 31, 2023, and the maximum consideration will be \$3,531.01 in 2019, for an approximate total amount of \$17,655.05 for this five-year term (not including annual CPI adjustments for 2020-2023).

▪ **Recommended Action**

Please approve this property lease renewal agreement and forward to the County Executive and the County Council for approval.

Please contact Eric L. Schlehuber at extension 6405, if you have any questions or concerns regarding the terms of this agreement.

Encl.