

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Sheriff's Office
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Division of Emergency Management
Contract or Grant Administrator:	John Gargett
Contractor's / Agency Name:	Mount Baker School District
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____	
Contract Cost Center: <u>1673519001</u>	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<input checked="" type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.	
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>0.00</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ _____	2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
Summary of Scope:	3. Bid or award is for supplies.
	4. Equipment is included in Exhibit "B" of the Budget Ordinance.
	5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
To lease tower access and equipment space at the Kendall Elementary School Tower Site.	
Term of Contract: Four Years and Seven Months	Expiration Date: 07/31/2025

Contract Routing:	1. Prepared by: <u>F Burkhardt</u>	Date: <u>04/12/2021</u>
	2. Attorney signoff: <u>B Waldron (via email)</u>	Date: <u>02/17/2021</u>
	3. AS Finance reviewed: <u>B Bennett (via email)</u>	Date: <u>03/02/2021</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>Mary Sewright</u>	Date: <u>04/01/2021</u>
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

NONEXCLUSIVE COMMUNICATIONS SITE LEASE

THIS NONEXCLUSIVE COMMUNICATIONS SITE LEASE ("Lease") is entered into effective as of the first day of January 2021 by and among Mount Baker School District, a Washington municipal corporation, ("Lessor"), and Whatcom County Sheriff's Office ("Lessee").

WHEREAS, Lessor owns and operates public school on the real property located at 7547 Kendall Road Maple Falls, Washington commonly known as Kendall Elementary School (the "Tower Site");

WHEREAS, Lessee desires to obtain a nonexclusive right to enter upon and to use the Tower Site for the purpose of installing, operating, and maintaining radio communications facilities to be used by Lessee in providing emergency services to the general public in Whatcom County, Washington; and,

WHEREAS, Lessor and Lessee have agreed to the terms of this Lease pursuant to which Lessor has agreed to grant to Lessee the nonexclusive right to enter upon and to use the Tower Site for the purpose of installing, operating, and maintaining radio communications facilities to be used by Lessee in providing emergency services to the general public in Whatcom County, WA.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter stated; the Parties mutually agree as follows:

1. **GRANT OF LEASE.** Lessor hereby grants to Lessee a nonexclusive right, subject to the terms and conditions set out in this Lease, providing Lessee with the right to enter upon and to use the Tower Site for the purpose of installing, operating, and maintaining radio communications facilities to be used by Lessee in providing emergency services to the general public in Whatcom County, Washington. Lessee and Lessor shall have the rights and obligations with respect to Lessee's use of the Tower Site set out in this Section 1 and as otherwise set out in this Lease.

A. **Right of Access.**

1. During the Lease Term, Lessee and its authorized contractors and agents shall have a non-exclusive right of entry and access to the Tower Site and the communications building located on the Tower Site (the "Communications Building") through existing gates and entrances and over existing roads and driveways for the purpose of the installation, maintenance, operation, and removal of telecommunication hardware, antennas, base stations, transmitters, and associated communication equipment ("Lessee's Facilities") to be used by Lessee in providing emergency services

to the general public in Whatcom County, Washington. Lessee shall have access to the Tower Site at all times and without advance notice to Lessor.

2. All individuals entering upon the Tower Site on behalf of Lessee shall carry identification credentials provided by Lessor at all times they are on the Tower Site.

B. Lessee's Permitted Installations.

1. Lessee shall have (i) the right to install, operate, and maintain inside the Communications Building one 19-inch hardware rack and radio communications hardware located on that rack.

2. Lessee shall have (i) the right to install, operate, and maintain on the antenna tower (the "Tower") located on the Tower Site 1 (one) seventy-two-inch directional antenna, cabling connecting Lessee's antenna on the Tower to Lessee's radio hardware located in the Communications Building. No part of any equipment or hardware installed by Lessee on the Tower shall exceed the height of the Tower; i.e., one hundred ninety (190) feet above the ground or obstruct FAA warning lights.

3. All above-ground work on the Tower Site shall be performed by Lessee and its approved contractors in compliance with NATE CTS certification or its equivalent and ANSI/ASSE Z359 fall protection standards following all current regulations.

4. The exact location of all equipment installed by Lessee on the Tower Site shall be approved by Lessor in advance of its installation. Such equipment shall be installed pursuant to plans approved by Lessor in advance of the installation, which approval Lessor shall not unreasonably deny, provided that Lessee's equipment and use of the Tower Site shall not interfere with Lessor's own use of the Tower Site.

5. Lessee shall provide, at its sole expense, all hardware and equipment for which Lessee have the right to install, operate, and maintain on the Tower Site under this Lease and shall maintain such hardware and equipment and its integrity and safety at its sole cost.

6. Lessee shall use appropriately licensed contractors to perform all installation and maintenance work permitted on the Tower Site by this Lease, and all such contractors shall be approved by Lessor in advance of their performing work on the Tower Site, which approval Lessor may grant or deny in the reasonable exercise of its discretion. All installation and maintenance work performed by Lessee and its contractors on the Tower Site shall be performed under Lessor's supervision.

7. Lessee shall repair, at its sole expense, any damage to the Tower Site and to property on the Tower Site not owned by Lessee that may result from the activities of Lessee or its contractors. Such damage shall be repaired within fifteen (15) days to Lessor's sole satisfaction.

8. All equipment installed by Lessee on the Tower Site shall be and shall remain the property of Lessee during the term of this Lease and any extension. At the termination of this Lease, Lessee shall remove all of its equipment from the Tower Site and shall repair any damage to the Tower Site that may have resulted from its use of the Tower Site and from its installation, operation, maintenance, and removal of its equipment on the Tower Site.

2. LEASE TERM.

A. **Initial Term.** The initial term of this lease shall commence on the effective date first set out above (the "Effective Date") and expire at 11:59 p.m. local time on July 31, 2025 unless sooner terminated in accordance with the provisions of this Lease. The initial term of this Lease ("Initial Term"), together with all renewals thereof, are referred to herein as the "Term."

B. **Renewal Terms.** Provided that Lessee has not been in material default under this Lease beyond any required notice and cure period, and further provided neither Lessor nor Lessee have elected to terminate this Lease as otherwise provided herein, Lessee shall have two (2) options to renew this Lease for an additional period of five (5) years each, upon the terms and conditions of this Lease (each, a "Renewal Term"). Such option may be exercised by Lessee on or before the date that is one (1) year prior to the expiration of the Initial Term, or subsequent Renewal Term, by delivery to Lessor of written notice of Lessee's election to renew the Lease.

C. **Lessor Termination Right.** Lessor shall have the right to terminate this Lease and cancel any remaining Renewal Terms upon the expiration of the Initial Term, or upon the termination of any succeeding Renewal Term. Such termination right may be exercised by Lessor on or before the date that is one (1) year prior to the expiration of the Initial Term, or any succeeding Renewal Term, by delivery to Lessee of written notice of Lessor's election to terminate this Lease.

D. **Lessee Termination Right.** Lessee may terminate this Lease at any time conditioned upon one hundred eighty (180) days advance notice to Lessor, provided Lessee has no outstanding rent due to Lessor, and has removed all equipment and improvements required to be removed under this Lease from the Tower Site at the termination of this Lease.

3. **RENT.** Lessee shall pay to Lessor a minimum annual rent ("Base Rent") as set forth in this Section 3. All sums payable to Lessor under this Lease shall be paid in lawful money of the United States, at the address specified in Section 18 below, or such other address as Lessor may from time-to-time specify by written notice to Lessee.

A. **Lease Year.** As used in this Lease, the term "Lease Year" means each consecutive twelve (12) month period during the Term, commencing on the Effective Date, and expiring twelve months thereafter.

B. **Base Rent.**

1. The Base Rent payable for Lessee's rights with respect to Lessee's rights under Sections 1(B)(1)(i) (one 19-inch hardware rack) and 1(B)(2)(i) (one 72-inch directional antenna) and 5(A) Electrical service) during the Lease shall be at no cost. All Base Rent shall be paid in advance on or before the first day of each Lease Year during the Term.

4. **USE.**

A. **Permitted Use.** The radio Tower Site is to be used by Lessee for the installation, removal, operation, repair, replacement, and maintenance of the Lessee's Facilities used in providing emergency services to the general public in Whatcom County, Washington, and for broadcasting operations related thereto, and for no other purpose without the consent of Lessor. The installation, removal, operation, repair, maintenance of the Lessee's Facilities, and Lessee's broadcasting operations shall be conducted in accordance with the terms and conditions of this Lease and the standards imposed by the Federal Communications Commission ("FCC") and any other governmental body or agency as shall have jurisdiction over the Lessee's Facilities or with any activities of Lessee on the Tower Site.

B. **Compliance with Laws.** Lessee shall comply with all laws concerning the Tower Site or Lessee's use of the Tower Site, including, without limitation, the obligation, at Lessee's expense, to alter, maintain, or restore the Tower Site, in compliance and conformity with all laws relating to the condition, use, or occupancy of the Tower Site during the Term.

C. **No Exclusive Use.** Lessor shall have the right for itself and its affiliates to use the Tower Site, including but not limited to space in the Communication Building and the Tower, and to lease or otherwise grant the right to use the Tower Site to any other person or entity for any purpose, including but not engaging in any form of radio broadcasting and/or electromagnetic communication. The use by Lessee of the Tower Site shall be, and is, subject to the exercise of rights by Lessor and third parties using or

the Tower Site to the extent that the exercise by Lessor and such third parties of their respective rights does not violate or conflict with rights granted to the Lessee hereunder.

D. Interference.

1. Lessee shall not take any action or install or utilize the Lessee's Facilities in any manner that Interferes with any other person's broadcasting signal (or receiving ability) on the Tower Site or on any immediately adjacent parcels of real property. As used in this Lease, the terms "Interfere" and "Interference" means (i) a condition existing that constitutes interference within the meaning of the provisions of the recommended practices of the Electronics Industry Association and the rules and regulations of the FCC then in effect, or (ii) a material impairment of the quality of receiving ability, or material impairment of sound or picture signals of a broadcasting activity, to the extent such receiving or broadcasting activities are now or hereafter conducted on the Tower Site or on any immediately adjacent parcels of real property.

2. Lessor shall notify Lessee of Lessee's Interference in writing ("Interference Notice"). Upon receipt of notification, Lessee shall (x) take Reasonable efforts necessary to identify and rectify the Interference, and (y) cease the operation of the source of such Interference or reduce operating power to eliminate the Interference until the Interference is fully rectified. In the event Lessee fails to cease operation of the source of such Interference or reduce operating power to eliminate the Interference within forty-eight (48) hours or receipt of the Interference Notice, Lessor may, at its option, disconnect power to the Lessee's Facilities. If Lessor does not exercise its option to disconnect power and if Lessee fails to correct and eliminate the interference within fifteen (15) days of receipt of the Interference Notice, Lessee shall be in Default hereunder and Lessor may exercise any and all remedies provided for herein. Lessee shall pay any costs incurred as a consequence of its exercise of remedies hereunder.

3. Lessor shall use all reasonable efforts to ensure that other parties that install equipment on or use the Tower Site after the Effective Date of this Agreement do not cause interference to the operation of the Lessee's Facilities ("Objectionable Interference"). Should Objectionable Interference be experienced by Lessee, Lessee shall provide notice in writing of such Objectionable Interference to Lessor, and Lessor shall cooperate with Lessee in identifying the source of the Objectionable Interference and in causing the responsible party to take such reasonable steps necessary to eliminate the Objectionable Interference.

5. UTILITIES.

A. **Electrical Service for Lessee's Use.** Lessor shall provide Lessee, at Lessor's expense, electrical service and appropriate environmental cooling and heating of the Communications Building up to 800 kWh per month. Power usage over 800 kWh per

month may be billed to Lessee at Lessors discretion. Lessor shall have no other obligation to provide utilities to the Tower Site or for the use of Lessee.

B. Lessor's Limitation of Liability Regarding Electrical Service. In no event shall Lessor be liable for the quality, quantity, failure or interruption of electrical service to the Tower Site or damages resulting directly or indirectly therefrom by reason of or resulting from any accident, or the need or priority of repairs or improvements, or by reason of orders of any military, civil or governmental authority, or riots, insurrections or invasions, or any other reason beyond the control of Lessor.

6. CARE OF TOWER SITE. Lessee shall use all reasonable precautions to prevent waste, damage, or injury to the Tower Site or to the equipment of others located on the Tower Site. During the Term, Lessee, at its expense, shall cause the Lessee's Facilities at the Tower Site to be kept in good condition and repair and in accordance with reasonable engineering standards and requirements of the FCC and all other public authorities with jurisdiction over the Tower Site. Lessee shall, at its expense, repair any damage it or its agents or contractors cause to the Tower Site, reasonable wear and tear excepted. In the event Lessee fails to so maintain or repair the Tower Site or the Lessee's Facilities, Lessor shall deliver notice of such failure to Lessee. In the event Lessee fails to thereafter repair or maintain the Tower Site or Lessee's Facilities within fifteen (15) days from Lessee's receipt of Lessor's notice, Lessor may cause the Lessee's Facilities or the Tower Site to be repaired – in which case, Lessee shall reimburse Lessor for the reasonable costs incurred in connection therewith within ten (10) days after Lessor delivers an invoice to Lessee therefor. Lessee's use of the Tower Site shall not unnecessarily interrupt Lessor's use of the Tower Site, nor disrupt existing utilities, and/or other Lessee of the Tower Site.

7. ENVIRONMENT.

A. Limitation on Use of Hazardous Substances. With the exception of Hazardous Substances that are legally used in the normal course of its business, Lessee will not bring to, transport across or dispose of any Hazardous Substances on the Tower Site. Lessee may keep on the Tower Site substances used in backup power units (such as batteries and diesel generators) commonly used in the communications industry. Lessee's use of any approved substances constituting Hazardous Substances must comply with all applicable laws, ordinances and regulations governing such use.

B. Indemnity. If Lessee breaches the obligations stated in the preceding section, then Lessee shall indemnify, defend and hold the Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Tower Site, damages for the loss or restriction on use of the Tower Site, or elsewhere, and sums paid in settlement of claims,

attorneys' fee, consultant fees and expert fees incurred or suffered by Lessor as a result of Lessee's acts either during or after the Term. These indemnifications by Lessee include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Substances present on the Tower Site or in soil or ground water on or under the Tower Site. Lessee shall immediately notify Lessor of any inquiry, investigation or notice that Lessee may receive from any third party regarding the actual or suspected presence of Hazardous Substances on the Tower Site.

C. Notwithstanding the foregoing or any other provision in this Lease, Lessee shall not be liable or responsible for any environmental condition, including the release of Hazardous Substances, that existed before the execution of this Lease.

D. **Hazardous Materials Defined.** As used herein, the term "Hazardous Substances" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local government authority, the State of Washington or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment.

8. **ASSIGNMENT OR SUBLEASE.**

A. **Lessee's Assignment.** Lessee may not sublet any rights to access or use the Tower Site granted by Lessor under this Lease. Lessee may assign all its rights under this Lease only (i) to governmental entities whose sole purpose for using the Tower Site is to provide emergency services to the general public in Whatcom County, Washington, (ii) in its entirety, and (iii) with the prior written consent of Lessor, which consent Lessor shall not unreasonably withhold or delay. If at any time Lessee desires to assign this Lease, Lessee shall submit a written request to Lessor, including with the request the identification of the proposed assignee, a description of its proposed use of the Tower Site, and a statement of the terms upon which the assignment is proposed to be made. Lessee will promptly, on request, submit to Lessor such further reasonable documentation relative to the proposed assignment or sublease as Lessor may request. In the event that Lessor grants consent to any assignment of this Lease, the assignment may be conditioned on reasonable conditions imposed by Lessor. Any assignee shall be subject to all of the terms and conditions of this Lease, including those terms and conditions applicable to permitted use and assignment. No assignment shall, to any extent, impair, limit, or qualify the continuing obligation of Lessee to perform all of the obligations of the Lessee under this Lease as if the assignment had not taken place. Any purported assignment or subletting without full compliance with this Section shall constitute a Default and shall vest no rights in the purported assignee or subtenant.

B. **Lessor's Assignment.** Lessor shall have the right to assign its rights and duties hereunder at any time without the consent of Lessee.

9. INDEMNITY AND INSURANCE.

A. **Insurance.**

1. At all times during the Term, Lessee shall carry (a) commercial general liability insurance, insuring both Lessee and Lessor, with not less than Two Million Dollars (\$2,000,000.00) single limit coverage per occurrence. (b) "all risk" property insurance on the Tower Site and the Lessee's Facilities in an amount equal to the full replacement value thereof, (c) workers' compensation insurance in statutorily-required amounts, and (d) automobile liability insurance for all owned, leased, non-owned, and hired automobiles used in connection with Lessee's activities on the Tower Site at no less than One Million Dollars (\$1,000,000) per occurrence combined single limit for injury or property damage.

2. All of Lessee's insurance required hereunder shall be with insurance carriers licensed to do business in the State of Washington, and rated no lower than A- with a Financial Size Category (FSC) not less than X in the most current edition of A.M. Best's Property-Casualty Key Rating Guide. Lessee shall deliver to Lessor certificates evidencing the insurance required to be maintained by Lessee hereunder on an annual basis. Without limitation upon the other terms and provisions of this Section 10, each insurance policy maintained by Lessee with respect to the Tower Site shall be endorsed to provide (i) that in the event of cancellation, non-renewal or material modification, Lessor shall receive 30-days advance written notice thereof and (ii) that Lessor shall receive renewal Certificates of Insurance no later than 30-days in advance of each renewal.

3. Lessee may satisfy the insurance obligations set forth in this Section by maintaining a self-insurance program or participating in a governmental entity risk pool satisfying the minimum requirements set forth in this Section. Lessee shall provide Lessor with such evidence as Lessor may reasonably require of such substitutes for commercial liability insurance.

4. Notwithstanding any other provision of this Lease, Lessor and Lessee hereby release each other and each other's employees and agents from and against any and all liability (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage that is coverable by insurance required to be carried by that party under this Lease, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party is responsible. Because the provisions of this Section will preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurance company or

any other person, each party to this Lease shall give to its insurers notice of the terms of the mutual releases contained in this Section, and have the insurance required under this Lease properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of the mutual releases contained in this Section.

B. **Indemnity.** Lessor shall not be liable for injury, including death, to any person, or for damage to any property, regardless of how such damage may be caused, sustained or alleged to have been sustained by Lessee or others as a result of the Lessee's activities on the Tower Site. Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Tower Site, or the conduct of its business on the Tower Site, and shall further indemnify and hold Lessor harmless from and against any and all claims arising from any breach or default by Lessee in the performance of its obligations hereunder, and from and against any and all costs, expenses and liabilities incurred in connection with such claim. The provisions of this section shall survive the expiration or earlier termination of this Lease.

10. ALTERATIONS AND IMPROVEMENTS.

A. **Sole Risk.** The risk of loss or damage to Lessee's Facilities and any improvements and personal property of Lessee of every kind or description which may at any time be on the Tower Site shall be Lessee's risk or the risk of those claiming under Lessee, and Lessor shall not be liable for damage to or theft of or misappropriation of such property, any injury or damage to persons or property resulting from or related to the Lessee's Facilities or personal property or any latent defect in any improvements located upon the Tower Site; provided, however, the foregoing limitation on Lessor's liability shall not apply to Lessor's acts of gross negligence and/or willful misconduct.

B. **No Improvements or Alterations.** Lessee shall have no right to make changes and alterations to the Tower Site except as expressly authorized by this Lease.

C. **Liens.** Lessee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Lessee, operation of law or otherwise, to attach to or be placed upon Lessor's title or interest in the Tower or the Tower Site, and any and all liens and encumbrances created by Lessee shall attach to the Lessee's Facilities only. Lessee covenants and agrees not to suffer or permit any lien of mechanics, suppliers, materialmen or others to be placed against the Tower Site or the Tower Site, or any portion thereof, and Lessee covenants and agrees within thirty (30) days after written notice by any entity of the filing of such lien to cause it to be release and removed of record. If Lessee shall fail to cause such lien or encumbrance to be discharged, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge the same either by procuring the discharge of the lien by payment, deposit or by bonding proceedings. Any amounts paid by Lessor to remove or otherwise satisfy a lien created by Lessee, and all reasonable costs and expenses, including

reasonable attorneys' fees, incurred by Lessor in connection therewith, shall bear interest from the date that the cost was incurred by Lessor at the rate of one and one-half percent (1-1/2%) per month until paid and shall be reimbursed by Lessee immediately upon demand by Lessor.

11. **TAXES.** Lessor shall pay all real estate taxes, assessments, or levies assessed or imposed against the Tower Site. Lessee shall pay all personal property or other taxes imposed against the Lessee's Facilities.

12. **DAMAGE, DESTRUCTION, AND CONDEMNATION.** If Lessee reasonably determines that the Tower Site is damaged or destroyed (unless such damage or destruction is caused by the acts or omissions of Lessee) or is condemned, such that the Tower Site is rendered unsuitable for Lessee's use in providing emergency services to the general public in Whatcom County, Washington, then Lessee shall provide written notice to Lessor within thirty (30) days of such damage or destruction of its intent to terminate this Lease. If any portion of the Tower Site is damaged, destroyed or condemned and Lessee does not terminate this Lease under the provisions of the immediately preceding sentence, then this Lease shall remain in full force and effect. If any portion of the Tower Site or Lessee's Facilities is damaged or destroyed as a result of the acts or omissions of Lessee, this Lease shall remain in full force and effect, and Lessee shall promptly repair such damage or destruction at Lessee's sole expense.

13. **SURRENDER OF TOWER SITE.** Upon the termination of this Lease for any reason, Lessee shall, at its sole expense, remove all equipment and other property owned by Lessee or placed by Lessee on the Tower Site not later than sixty (60) days following the termination of this Lease.

14. **QUIET ENJOYMENT.** Lessor covenants that Lessee shall and may peacefully have, hold and enjoy the Tower Site, subject to the provisions of this Lease, provided Lessee pays the Rent herein recited and performs all of Lessee's covenants and agreements herein contained.

15. **DEFAULT.**

A. **Events of Default.** The occurrence of any one or more of the following events will constitute events of default (each, a "Default" or "Event of Default"):

1. Lessee fails to pay any Rent payable by Lessee under this Lease within 10 business days after Lessee's receipt of written notice from Lessor that such payment is past due. However, if Lessor has provided more than two (2) such notices in any Lease Year, then for the remainder of that Lease Year, it will be an Event of Default if Lessee fails to pay any Rent payable by Lessee under this Lease within five (5) business days after such payment is due (without any notice);

2. Lessee breaches or violates any provision of this Lease that is described in such provision as a "Default" or "Event of Default" or for which a specific performance or notice and cure period is provided and Lessee fails to perform such action or cure such violation within the time period therein provided;

3. Lessee abandons or vacates the Lessee's Facilities and the Tower Site (which shall be construed to mean Lessee has not conducted its business on the Tower Site for a period of time exceeding forty-five (45) days), unless such abandonment or vacation is excused under other provisions of this Lease; or

4. Lessee fails promptly and fully to perform any other of its promises, covenants or agreements in this Lease within thirty (30) days after receipt of written notice thereof from Lessor; provided, however, if the breach is of such a nature that it cannot be cured within such period, then Lessee will have such additional time as may be reasonably necessary to cure that breach provided Lessee (i) commences to cure that breach within ten (10) days after receipt of written notice thereof from Lessor and (ii) thereafter diligently pursues such cure to completion.

B. Remedies of Lessor. Upon the occurrence of any Event of Default, Lessor will have the right to pursue and enforce any and all rights and remedies available to Lessor hereunder or at law or in equity, including, without limitation, the following: (1) to terminate this Lease; (2) cure any such default and invoice Lessee for the costs and expenses of the same, which invoice shall be payable within thirty (30) days of its receipt by Lessee; and (3) if Lessee remains in Default beyond any applicable cure period, whether or not Lessor shall have terminated this Lease, Lessor may demand immediate removal by Lessee of the Lessee's Facilities from the Tower Site, and if Lessee fails to do so within thirty (30) days of Lessor's demand, Lessor may remove and store all of Lessee's property at Lessee's sole cost. In such event, Lessor shall not be liable to Lessee for damage to the Lessee's Facilities in the course of such removal, and Lessee shall reimburse Lessor for any damages to the Tower Site or Tower Site caused by such removal. Lessor's exercise of any particular remedy shall not preclude Lessor from exercising any other remedy available to Lessor, whether under this Lease, at law or in equity.

C. Lessor Default; Limitation on Lessor's Liability. Lessor will not be in default of any provision of this Lease prior to the expiration of not less than thirty (30) days (plus such additional time as may reasonably be required to cure Lessor's failure, if such default reasonably cannot be cured within such thirty (30) days) after written notice from Lessee specifying Lessor's failure. All obligations of Lessor under this Lease will be binding upon Lessor only during the period of its ownership of the Tower Site and not thereafter. The term "Lessor" in this Lease will mean only the owner of the Tower Site so long as it owns the Tower Site, and in the event of the transfer by such owner of its

interest in the Tower Site, such owner will thereupon be released and discharged from all obligations of Lessor thereafter accruing, but such obligations will be binding during the Term upon each new owner for the duration of such owner's ownership.

16. SUBORDINATION.

A. **Lease Subordinate.** Upon written request by Lessor, Lessee agrees to subordinate its rights under this Lease to the lien of all mortgages (regardless of whether such mortgages now exist or may hereafter be created) with regard to all or any part of the Tower Site, and to any and all advances to be made thereunder and all modifications, consolidations, renewals, replacements and extensions thereof provided the mortgagee(s) shall agree to recognize the Lease of Lessee (if Lessee is not then in default hereunder) in the event of foreclosure under any such mortgage.

B. **Sale of Tower Site.** Lessee shall, in the event of the sale or transfer of Lessor's interest in the Tower Site, or in the event of any proceedings brought for the foreclosure of any mortgage covering the Tower Site, attorn and by the execution of this Lease does so attorn to and recognize such purchaser or assignee or mortgagee as Lessor under this Lease.

C. **Certificates.** Lessee agrees that, upon the request of Lessor or any such assignee or mortgagee, Lessee shall, within ten (10) business days from Lessor's request, execute and deliver whatever instruments may be required to carry out the intent of this section. Failure to do so shall be an Event of Default hereunder.

17. **SERVICE INTERRUPTIONS.** Lessor shall incur no liability to Lessee for any act or failure to act if prevented by war, fires, accidents not as a result of Lessor's own gross negligence or willful misconduct, acts of God, or other causes beyond its control, including but not limited to, temporary or intermittent service interruptions resulting from maintenance and repair work to the Communications Building, the Tower, facilities of Lessor, or other Lessee of the Tower Site, or alterations to the Communications Building, the Tower, or the Tower Site performed by Lessor, any other Lessee of the Tower Site, or required by any governmental authority. Except as otherwise provided in Section 12 of this Lease, any delay, disruption or hindrance caused to Lessee, its transmissions or business that is occasioned by maintenance, repair work, or any other commercially reasonable purpose by Lessor, any other Lessee of the Tower Site, or any governmental authority shall not affect or impair Lessee's obligation to pay Monthly Base Rent hereunder, so long as the party conducting such work acts in accordance with commercially reasonable engineering practices.

18. **NOTICES.** Except as otherwise specifically set forth herein, any demand, request or notice which either party hereto desires, or may be required to may or deliver to the other, shall be in writing and shall be deemed given when personally delivered, or on the next business day and when delivered by an overnight delivery service which issues

receipts (such as Federal Express), or when received by facsimile at the facsimile number shown below, or three (3) days after being deposited in the United States mail, in registered or certified form, return receipt requested, addressed as follows:

Lessor:

Mount Baker School District
PO Box 95
Deming, WA 98244
Attn.: Ben Thomas
Telephone No.: (360) 617-4604
Email: bthomas@mtbaker.wednet.edu

Lessee:

Whatcom County Sheriff's Office
311 Grand Avenue, Public Safety Building
Bellingham, WA 98225
Attn.: Communications Manager, Division of Emergency Management
Telephone No.: 360-676-6681
Email address: wcsodem@co.whatcom.wa.us

Or to such other address, facsimile number and/or person as either party may communicate to the other by like written notice.

19. **SEVERABILITY.** It is the intention of the Lessor and Lessee that this Lease comply with FCC rules, regulations and policies and the applicable state and local laws and regulations and any covenants or restrictions of record. 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. The parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

20. **BROKERS.** Lessee warrants that it has dealt with no broker, commission agent, finder or other person or entity with respect to this Lease, and Lessor warrants that it has dealt with no broker, commission agent, finder or other person or entity with respect to this Lease. Each party shall indemnify and hold harmless the other party from any and all claims, actions, damages, costs, expenses, and liability whatsoever, including reasonable attorney's fees that may arise from any claims for commission or finder's fees in connection with this Lease or the Tower Site.

21. **ENTIRE AGREEMENT.** This Lease and all exhibits attached hereto constitute the entire agreement between Lessor and Lessee regarding the subject matter of this Lease.

There are no terms, obligations, covenants or conditions other than those herein contained. No modification or amendment to this agreement shall be valid or effective unless evidenced by an agreement in writing between the parties hereto. No waiver by any party of any right, default, misrepresentation, or breach of warranty or covenant under this Lease shall be effective unless in writing and signed by the waiving party. No such waiver shall be deemed to extend to any prior or subsequent right, default, misrepresentation, or breach of warranty or covenant under this Lease, or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

22. **GOVERNING LAW; VENUE; ATTORNEYS FEES.** This Lease and all rights and liabilities of the parties hereunder shall be construed and governed by the laws of the State of Washington. In the event of a dispute between the parties hereto concerning the terms of this agreement, or any action or cause of action in connection therewith may be had in Whatcom County, Washington, and the prevailing party as to such action shall be entitled to receive a reasonable attorney fee as determined in the court in such action. This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. Time is of the essence of this Lease.

WHATCOM COUNTY:
Recommended for Approval:



Bill Elfo, Sheriff

04/12/21

Date

Approved as to form:

Brandon Waldron, via email
Prosecuting Attorney

02/17/2021
Date

Approved:

Accepted for Whatcom County:

By: _____
Satpal Sidhu, Whatcom County Executive

Date

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 2021, before me personally appeared Satpal Sidhu, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires _____.

IN WITNESS WHEREOF, the parties hereto have executed this Lease, to be effective as of the Effective Date first set forth above in this Lease.

Lessor:

MOUNT BAKER SCHOOL DISTRICT

By: *[Signature]*
Name: Mary Sewright
Its: Superintendent
Date: 4-1-21

STATE OF WASHINGTON

COUNTY OF Whatcom

ss.

**Notary Public
State of Washington
Kristi Baklund
Commission Expires 11/30/21**

I certify that I know or have satisfactory evidence that Mary Sewright is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Superintendent of Mount Baker School District, a Washington corporation, and that it executed the within and foregoing instrument to be its free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 1 day of April, 2021.

Kristi Baklund

Notary public in and for the State of Washington,
residing at Deming.

Printed name: KRISTI BAKLUND

My appointment expires 11/30/21.