


**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Parks & Recreation
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Administration (8010)
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	Verizon Wireless
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? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: _____	
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"/> 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 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>25,251 annually</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: 1. Exercising an option contained in a contract previously approved by the council. 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. 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.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	
Summary of Scope: Twenty-year communication tower site lease to Verizon Wireless beginning 4/1/22. Site located at the Lookout Mountain Forest Preserve. Current site lease to Verizon Wireless expires 3/31/22.	
Term of Contract: 20-years	Expiration Date: 3/31/42

Contract Routing:	1. Prepared by: Michael McFarlane	Date: 4/30/20
	2. Attorney signoff: 	Date: 5/5/2020
	3. AS Finance reviewed: <u>bbennett</u>	Date: 5/25/2020
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____ ✓	Date: 5-18-2020
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____



COMMUNICATION SITE LAND LEASE

Agreement No. _____

Lessee's Reference No. _____

THIS COMMUNICATION SITE LAND LEASE WITH UTILITIES (**Lease**) is made by and between WHATCOM COUNTY, a political subdivision of the State of Washington, acting by and through its Parks & Recreation Department (**County/Lessor**), and Cellco Partnership d/b/a Verizon Wireless (UBI 602057104) (**Lessee**).

RECITALS

WHEREAS, County (or its predecessor-in-interest) and Lessee (or its predecessor-in-interest) entered into that certain Communication Site Land Lease dated May 2, 2012 ("**Original Lease**"), pursuant to which the Lessee has an exclusive leasehold interest for the transmission and receipt of wireless communications signals within the Lease Area (as defined herein); and

WHEREAS, Lessee, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Lease Area (as defined herein), all as more particularly described therein; and

WHEREAS, Lessee has granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Lessee, all as more particularly set forth in the POA; and

WHEREAS, Lessor and Lessee desire to terminate the Original Lease as of the Commencement Date (as defined herein in Section 4.01) of this Lease and thereafter this Lease shall control, and the Original Lease shall be of no further force and effect. Notwithstanding anything to the contrary contained herein, the terms of the Original Lease shall remain in full force and effect up until the Commencement Date (as defined herein in Section 4.01) of this Lease.

SECTION 1 – DEFINITIONS

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1.01 “Agreement Number.” County’s identification number assigned to this Lease.

1.02 “Anniversary Date.” The annual date established by the Rent Commencement Date and on which Rent is due.

1.03 “Communication Site Area.” That area labeled as “Communication Site Area” on the Survey and Site Plan (both defined below), which includes, but is not limited to, the Facility Use Area, dedicated parking areas and Access, as applicable.

1.04 “Communication Site Facilities.” Towers, structural tower base(s), one or more buildings, generator(s), and fuel storage tank(s) and other Improvements as described and pre-approved in the Lessee’s original Survey and Site Plan.

1.05 “Commencement Date.” The mutually agreed upon date on which the Lease is effective.

1.06 “County Owned Improvements.” Improvements made or owned by County as shown on the Site Plan.

1.07 “Emergency.” An event posing an imminent threat of bodily injury, property damage, or critical equipment failure.

1.08 “Electronic Interference.” Harmful transmission of radio wave frequencies that disrupt transmission and receipt of radio waves and includes interference as defined by the Federal Communications Commission (FCC).

1.09 “Equipment.” All electronic equipment placed on and within the Improvements located on the Facility Use Area. This includes, but is not limited to, antennas, equipment cabinets, Radio Units (defined below) and backup power batteries. Equipment is personal property and shall at no time be deemed a fixture to the real property on which it is located.

1.10 “Facility Use Area.” That certain area of the Communication Site Area identified on the original Survey and Site Plan.

1.11 “Government Approval.” All necessary federal, state, and local licenses, permits, and approvals.

1.12 “Hazardous Substance(s).” Any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) and implementing regulations; and any hazardous substance under the Washington Model Toxics Control Act (Ch. 70.105D RCW) and implementing regulations; and any hazardous substance or hazardous waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9602 et seq.) and implementing regulations, as these laws are amended from time to time; underground storage tanks, whether empty, filled, or partially filled with any substance; asbestos;

urea formaldehyde foam insulation; PCBs; and any other substance, waste, material, or chemical deemed or defined as hazardous, toxic, a pollutant, contaminant, dangerous or potentially dangerous, noxious, flammable, explosive, or radioactive, the removal of which is required or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated or penalized by any federal, state, county, municipal or other local governmental statute, regulation, ordinance, or resolution as these laws are amended from time to time.

1.13 “Improvements,” consistent with RCW 79.02.010(8), are additions within, upon, or attached to Lease Area (defined below). This includes, but is not limited to, fill, structures, concrete pads, towers, shelters, utilities, generators, fuel storage tanks and fixtures. Improvements also include additional rock, earth, or ballast placed on Lease Area. Improvements include any construction, alteration, or addition to pre-existing Improvements. Improvements do not include Equipment.

1.14 “Interference Notice.” Written notification by Lessee to County of Electronic Interference on the Communication Site Area potentially arising from County-managed lands; and written notification by County to Lessee regarding Electronic Interference on County-managed lands potentially arising from Communication Site Area.

1.15 “Lease Area.” That area described on the Survey inclusive of Communication Site Area, Utility Area, and Road Access Area.

1.16 “Lessee.” Party holding a possessory interest in real or personal property under this lease.

1.17 “Lessee-Owned Improvements.” Are Improvements authorized by County, located within the Lease Area, and (1) made by Lessee, or (2) acquired by Lessee from County, a prior tenant or a Permittee.

1.18 “Party(ies).” County and Lessee may jointly be referred to herein as the “Parties” or individually, a “Party.”

1.19 “Permittees.” Lessee’s employees, agents, contractors, sublessees, subcontractors, licensees, invitees, and assigns.

1.20 “Personal Property.” Items that can be removed from Lease Area and Improvements without (a) injury to Lease Area or Improvements or (b) diminishing the value or utility of Lease Area or Improvements.

1.21 “Physical Interference.” Natural or man-made objects that cause physical obstruction to Lessee’s use of Communication Site Area.

1.22 “Radio Unit.” A radio transmitter and/or receiver.

1.23 “Road Access Area.” That certain area of the County’s Land identified on the Survey and Site Plan.

1.24 “Site Plan.” That certain site plan named _____ dated _____ on file with Whatcom County, under the Agreement Number for this Lease.

1.25 “Survey.” The certain Record of Survey filed in Whatcom County on _____ under Auditor’s File Number _____.

1.26 “County Land.” The larger parcel of real property owned by County in which the Lease Area is a part of.

1.27 “Termination Date.” The date this Lease expires, is cancelled, or terminated.

1.28 “Unauthorized Improvements.” Improvements made on Lease Area without County’s prior consent or Improvements made by Lessee that do not conform to the original Survey and Site Plan or this Lease.

1.29 “Utility Area.” That certain area of the County Land identified on the Survey and Site Plan.

1.30 “Work.” Construction, reconstruction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements or roads.

SECTION 2 - CONVEYANCES

2.01 Conveyances.

- (1) **Communication Site Area.** County hereby grants to Lessee an exclusive leasehold interest in the Communication Site Area generally described as and depicted in attached Exhibit A (Depiction of Communication site Area and Utility Area), and located within attached Exhibit D (Legal Description of County Land), and as depicted in the Survey and Site Plan referenced in this Lease. An exclusive leasehold is not granted to any other County owned property, which includes but is not limited to, common parking areas, non-exclusive utility services or areas, other tower sites, or as described in (2) and (3) below.
- (2) **Utility Area.** County hereby grants to Lessee a non-exclusive right to use the Utility Area.

- (3) **Road Access Area.** County hereby grants to Lessee a non-exclusive right to use the Road Access Area.

2.02 Access to Lease Area. Access to Lease Area includes a nonexclusive right to use an existing road over and across the location shown on the map marked attached as "Exhibit C". Such access shall be provided twenty-four (24) hours per day, seven (7) days per week, unless access is closed due to damage or acts of nature which renders access unavailable until repaired. Access by Lessee and permittees shall be for business purposes only.

2.03 Memorandum of Lease. At Lessee's expense and no later than sixty (60) days after receiving the fully executed Lease, Lessee shall record a short form of this Lease, in a form substantially similar to the Memorandum of Lease attached as Exhibit E and attachment E-1 with the Whatcom County Auditor's Office. Lessee shall provide County with a copy of the recorded Memorandum of Lease. If Lessee fails to record the Memorandum of Lease, County may record it and Lessee shall reimburse the costs of recording within sixty (60) days of County's demand.

2.04 Reservations by County.

- (1) County reserves for itself, its successors, and assigns, the right at all times for any purpose to cross and re-cross Lease Area at any place or grade; to grant easements and licenses over Lease Area; to sell, lease, or otherwise dispose of minerals, coal, oil, timber, gas, or other valuable materials from Lease Area insofar as such uses do not unreasonably interfere with Lessee's rights.
- (2) County and its agents may enter Lease Area and any structural Improvements thereon at all reasonable times for the purpose of inspecting the installations, or equipment, provided that, except in case of an emergency, County shall provide Lessee with at least ten (10) business days prior written notice prior to inspecting the Facilities Area to enable Lessee to arrange to accompany County. This clause shall not be construed to impose a duty to inspect.

2.05 Permittees. Conduct of Permittees will be deemed the conduct of Lessee.

2.06 Third-Party Interests. This Lease is subject to all valid interests of third parties noted in the records of Whatcom County and on file with the Whatcom County Parks & Recreation Department, Whatcom County Washington as of the Commencement Date. It is understood and agreed by the Parties that the Lessee's Communication Site Area is immediately adjacent to two (2) other communication towers that also lease county property and also utilize the access road

as is roughly depicted and described in Exhibit C. This Lease is not intended to alter, adversely impact, or restrict the County in its current and future use of its property.

2.07 Public Use. County is not responsible for public use that may impact Lease Area.

2.08 Lessee Warranties. Lessee warrants that the Survey and Site Plan are true and accurate descriptions of Lease Area and Improvements. County reserves the right to retroactively adjust Rent (as defined below) if at any time during the Term (as defined below) of the Lease, County discovers a discrepancy between Lease Area description and the area actually used by Lessee.

2.09 Inspection. Except as otherwise provided in this Lease, County makes no representation regarding the condition of Lease Area, Improvements located on Lease Area, the suitability of Lease Area for Lessee's intended use, compliance with governmental laws and regulations, availability of utility rights, or access to Lease Area. Except as otherwise provided in this Lease, Lessee accepts Lease Area "AS IS."

2.10 County Warranties. County makes no warranty of quiet enjoyment of Lease Area.

2.11 Existing Structures. All existing structures or improvements located on the Facility Site Area (as defined herein) as of the Commencement Date belong to Lessee or Permittees except as set forth below:

None

SECTION 3 - PURPOSE

3.01 Lease. Lessee shall have the right to use the Communication Site Area for the transmission and receipt of wireless communications signals. Lessee's permitted use includes constructing, installing, repairing, maintaining, upgrading, updating, removing, securing, and operating Equipment and Improvements as described and approved in the original Survey and Site Plan or the current configuration of Lessee's equipment and improvements as of the Commencement Date of this Lease, including Exhibits A and B.

3.02 Utilities. Lessee shall be permitted to use the Utility Area and Communication Site Area for installation, maintenance, repair, and use of underground and existing overhead power cables and conduits for underground power and fiber, as identified in the Site Plan and Exhibits A and B. In the event that utilities or fiber are necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) and cannot be located within the Easement(s) for ingress and egress, Lessor agrees to cooperate with Lessee and to act reasonably in allowing

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the location of utilities or fiber on other real property owned by Lessor, so long as there are no additional costs to Lessor and County property is not unduly burdened or diminished in value.

3.03 Road Access. Lessee shall be permitted to use the Road Access Area for access to and from the Communication Site Area and Utility Area for purposes of this Lease.

3.04 Extent of Use. Notwithstanding the restrictions on assignment of this Lease, Lessee has the right, at its sole discretion, to sublease, or otherwise enter into occupancy and use arrangements of Lease Area and share access rights granted under this Lease with Permittees, subject to the terms of this Lease.

Lessee may, at Lessee's sole expense, use any and all appropriate means of restricting access to the Communications Site Area, including construction of a fence around the Communications Site Area.

3.05 Maintenance. Lessee shall maintain Lease Area, excluding the Road Access Area, in a reasonable and safe condition throughout the Term, reasonable wear and damage from casualty or natural disaster excepted.

3.06 Restrictions. Lessee shall not cause or permit:

- (1) Damage to land or natural resources.
- (2) Removal of valuable materials as defined under RCW 79.02.010(15), minerals, coal, oil, or gas without the prior written consent of State.
- (3) Accumulation of debris or refuse;
- (4) Raising effective radiated power (ERP) within the Facility Use Area beyond that authorized by the FCC.

3.07 Compliance with Laws. Lessee shall comply with all applicable laws and regulations affecting its use of the County Land and assume at Lessee's sole expense, any costs of such compliance including any fines or penalties. Lessee shall obtain all federal, state, and local permits and licenses necessary to operate under this Lease.

3.08 Liens and Encumbrances. Unless expressly authorized by County in writing, Lessee shall keep Lease Area free and clear of liens or encumbrances arising from Lessee's use or occupancy of Lease Area. Notwithstanding the foregoing, Lessee may grant such encumbrances

of any improvements, personal property or fixtures owned by Lessee which are located within the Lease Area without the consent of Lessor so long as the County's lease interest or property is not impaired, restricted or encumbered.

SECTION 4 - TERM

4.01 Term. The Lease shall commence on April 1st, 2022 (the "**Commencement Date**") and continue until a period of twenty (20) years (the "**Term**") until March 31st, 2042 (the "**Termination Date**"), unless adjusted under the terms of this Lease. Use of the Road Access Area and the Utility Area shall terminate upon expiration or termination of the Lease, except for as necessary to remove any Equipment and Improvements required under this Lease from Lease Area in accordance with the terms of Condition at End of Term (as described in Section 4.05). The "Rent Commencement Date" shall be April 1, 2022.

4.02 Lease Extension.

- (1) County may allow Lessee to continue to hold the Lease Area for a period not exceeding one (1) year after the Termination Date of this Lease, if the Lease Area is not otherwise going to be utilized by County. Upon expiration of the one (1) year holdover period, County may issue a temporary permit to Lessee if County has not yet determined the disposition of the Lease Area for other County purposes. The temporary permit shall not extend beyond a five (5) year period.
- (2) Failure to Vacate. If County notifies Lessee to vacate Lease Area and Lessee fails to do so within the time set forth in Section 4.05, Lessee will be a trespasser and shall owe County all amounts due under RCW 79.02.300 or other applicable law.

4.03 Late Possession. If, for any reason whatsoever, County cannot deliver possession of Lease Area to Lessee on the Commencement Date, this Lease will not be void or voidable, nor will County be liable to Lessee for loss or damage resulting from the delay in delivery of possession. In such event, the Parties may renegotiate the affected terms of the Lease.

4.04 Lessee's Right to Terminate Agreement. Lessee may terminate this Lease at any time conditioned upon one hundred eighty (180) days' advance notice to County, which notice shall be "Surrender of Leasehold" as depicted in attached Exhibit F or in a form acceptable to County, provided Lessee has no outstanding Rent (as defined below) or other charges due to County, and has removed all Equipment and Improvements required to be removed under this Lease from Lease Area in accordance with the terms of Condition at End of Term (as described in Section 4.05).

4.05 Condition at End of Term. Within Ninety (90) days following the Termination Date (the “**Removal Date**”), Lessee shall surrender Lease Area to County in the same or better condition as on the Commencement Date, reasonable wear and damage from casualty or natural disaster excepted. County may require that Lessee provide a Phase I - environmental site assessment or equivalent to identify any environmental contamination.

4.06 End of Term. Disposition of Equipment and Lessee-Owned Improvements shall be in accordance with the following terms and conditions, and as provided in RCW 79.13.050.

- (1) By the Removal Date, all Equipment and Improvements, including impervious surfaces, constructed or installed by or at the direction of Lessee and Permittees shall be removed from the Lease Area, except as otherwise provided in this Lease or as the Parties otherwise agree in writing.
- (2) For any Lessee’s or Permittees’ Equipment and/or Improvements left on the Lease Area after the Removal Date, County shall have the right, at its option, to (i) deem any or all of such Equipment and/or Improvements abandoned and take ownership thereof; or (ii) remove, sell or dispose of such Equipment and/or Improvements as County sees fit, in accordance with all applicable laws.
- (3) If County chooses to remove any or all of the Equipment or Improvements from the Lease Area as permitted herein, Lessee shall reimburse County for the reasonable direct costs County incurs therefor; provided County completes the removal work and provides Lessee an invoice for such costs within eighteen (18) months after the Removal Date.
- (4) Notwithstanding anything in this Lease or under applicable laws to the contrary, Lessee and Permittees shall retain ownership of their Equipment and Improvements if the Term of this Lease is extended by mutual written agreement of the Parties, if Lessee holds over in accordance with the terms of Section 4.02, Lease Extension, or if Lessee re-leases the Lease Area under a new lease with the County.
- (5) Notwithstanding anything to the contrary contained in this Lease, County hereby waives Lessee’s obligation to remove the following Improvements, without need for any additional consent or documentation thereof: fill, additional rock, earth or ballast, and all foundations and utility conduits more than eighteen inches (18”) below surface-level; provided that such Improvements are left in a condition that

is deemed to be safe to health and the human environment, which shall include removal of all power cables from such underground utility conduit.

4.07 Disposition of Personal Property.

- (1) Lessee retains ownership of Personal Property, unless Lessee and County agree otherwise in writing.
- (2) Lessee shall remove Personal Property from Lease Area by the Removal Date.

County may sell or dispose of all Personal Property left on Lease Area after the Removal Date. Lessee shall pay for the cost of removal and disposal.

SECTION 5 – PAYMENT

5.01 Rent. Annual Rent is as set forth in Exhibit G, Rent Calculation. Annual Rent is due and payable prior to the Anniversary Date of each year after the Rent Commencement Date, and on or before the same date every year thereafter until the Termination Date.

- (1) **Rent.** Beginning on the Rent Commencement Date, until adjusted or revalued as set forth below, Lessee shall pay the County a base rent of **Twenty Four Thousand One Hundred Ninety and 80/100 Dollars (\$24,190.80)** annually for use of Lease Area identified as the **“Facility Site Area”** (the **“Rent”**) as detailed in Exhibit G (Rent Calculation).
- (2) **Rent Commencement Date.** The **“Rent Commencement Date”** shall mean the April 1st, 2022. The first such payment of Rent will be made within thirty (30) days of the Rent Commencement Date, and on or prior to each successive Anniversary Date annually thereafter.
- (3) **Road Use Fee.** Beginning on the Rent Commencement Date, Lessee shall pay a required road use fee (**“Road Use Fee”**) of **One Thousand Sixty and 90/100 Dollars (\$1,060.90)** for the first year of this Lease. Subsequent annual Road Use Fees shall be due and payable with the Rent for the remaining Term of this Lease, subject to adjustment as set forth in Annual Rent Adjustment as described below. In addition to the Annual Rent Adjustment described below, Lessee’s Road Use Fee will increase by **Two Hundred Fifty and 00/100 Dollars (\$250.00)** for each Additional Facility User (as defined below) of the Lease Area that locates its Equipment on the Lease Area after the Commencement Date, to be paid with

Lessee's annual Road Use Fee in the year the Additional Facility User (as defined below) first locates its Equipment on the Lease Area.

- (4) **Leasehold Excise Tax.** Lessee shall pay to County the leasehold excise tax as set forth in RCW Chapter 82.29A, or as may be amended. Leasehold tax shall be due and payable with the Rent. However, Lessee may be assessed leasehold excise tax directly from the Washington State Department of Revenue. In this instance, Lessee must submit to County a written request, with supporting documentation from the Washington State Department of Revenue, to terminate or cease leasehold excise tax billing by the County.
- (5) **Additional Facility User Fee.** Subject to the other applicable terms, provisions, and conditions of this Section:
- (a) Lessee shall pay County an amount equal to **Three Thousand and No/100 Dollars (\$3,000.00)** per year for each sublease, license or other collocation agreement for the use of any portion of the Lease Area entered into by and between Lessee or American Tower and a third party (any such party, the "**Additional Facility User**") subsequent to the Commencement Date (such amount, the "**Facility User Fee**"). The Facility User Fee shall not be subject to the escalations to Rent as in this Lease.
 - (b) The initial payment of the Facility User Fee shall be due within thirty (30) days of actual receipt by Lessee or American Tower of the first collocation payment paid by a Facility User. In the event a sublease or license with a Facility User expires or terminates, Lessee's obligation to pay the Facility User Fee for such sublease or license shall automatically terminate upon the date of such expiration or termination.
 - (c) County hereby acknowledges and agrees that Lessee and American Tower have the sole and absolute right to enter into, renew, extend, terminate, amend, restate, or otherwise modify (including, without limitation, reducing rent or allowing the early termination of) any future or existing subleases, licenses or collocation agreements for occupancy on the tower installed on the Lease Area, all on such terms as Lessee and/or American Tower deem advisable, in Lessee's and/or American Tower's sole and absolute discretion.
 - (d) Notwithstanding anything to the contrary contained herein, County hereby acknowledges and agrees that Lessee shall have no obligation to pay and

shall not pay to County any Facility User Fee in connection with: (i) any subleases, licenses, or other collocation agreements between Lessee (or American Tower), or Lessee's (or American Tower's) predecessors-in-interest, as applicable, and American Tower or any third parties, or such third parties' predecessors or successors-in-interest, as applicable, entered into prior to the Commencement Date (any such agreements, the "**Existing Agreements**").

- (6) **Refunds.** County shall not refund any monies paid in Rent between the last Anniversary Date and Termination Date unless agreed in overpayment or excess of what was due in Rent.
- (7) **Annual Rent Adjustment.** County shall increase the Rent by three percent (3%) for the Facility Site Area, Communication Site Area, Tower Facility User and Road Use charges on every Anniversary Date for all years except for those years in which County revalues the Rent under this Section.
- (8) **Change in Use.**
 - (a) Any adjustment to Lessee's Road Use Fee as a result of a change of use will be based on County's reasonable estimate of Lessee's and Permittees' use of the Road Access Area.
 - (b) If Lessee fails to notify County of any Additional User, County shall charge the value of the change in use from the date of the change in use. Should the date of use change be indeterminable, County shall charge no less than one (1) year's Rent and interest on such past due Rent in accordance with the terms of Section Interest Penalty for Past-Due Rent and Other Sums Owed.

5.02 Rent Revaluation, Fifth-Year and Subsequent Revaluations. At the end of the first (5) year period and at the end of any subsequent five (5) year period, County shall revalue the Rent (Adjustment Date). County shall provide notice of this revaluation to Lessee in writing no later than sixty (60) calendar days before the Anniversary Date. Rent will be revalued as follows:

- (1) The Facility Site Area, Equipment Use and Road Use Fee will be revalued based on the cumulative percent change in the "Consumer Price Index, All Urban Consumers, US City Average," (**CPI**) for "all items" since the Commencement Date or last time of Rent revaluation. In the event the CPI ceases to be published, County may substitute such other comparable cost of living index as then may be in publication by a comparable governmental agency.

- (2) Independent Appraisal. If Lessee does not agree with County's revaluation, Lessee may submit to County an appraisal of market rent performed by an independent and licensed appraiser at Lessee's expense for County's consideration. Lessee must submit such appraisals to County within thirty (30) calendar days of Lessee's receipt of notification of the adjusted rent, or County's determination of market rent is final with no right of appeal with rent due as set forth in County's initial notice. If Lessee timely submits an appraisal, County shall notify Lessee in writing whether County accepts or rejects Lessee's appraisal of market rent. Lessee shall pay the adjusted Rent within ten (10) business days of receipt of notice of whether Lessee's appraisal is accepted or rejected.
- (3) Parties may agree to a continuation of three percent (3%) per year, as provided in Annual Rent Adjustment.
- (4) Road Use Fee. County will evaluate road maintenance and replacement costs associated with prorated use of road by Lessee and Lessee's Permittees at Rent Revaluation dates.

Failure on the part of County to establish a new annual Rent by the Adjustment Date shall not preclude County from doing so thereafter, and the adjusted rent shall be retroactive to the Adjustment Date

5.03 Non-Rent Payments.

- (1) **Taxes.** Lessee shall pay all real and personal taxes imposed on Communication Site Area that result from any changes or improvements Lessee makes to the Improvements located thereon during the Term of this Lease.
- (2) **Assessments.** Lessee shall pay its pro rata share of assessments charged against Lease Area (excluding the Road Access Area.) Lessee shall pay the assessment within thirty (30) days of receipt of written notice from County.
- (3) **Removal of Valuable Materials.** Prior to any removal of County trees or vegetation, including those causing Physical Interference, Lessee shall notify County in writing and obtain County's approval. County's approval shall be conditioned on payment for the market value of any valuable materials removed and compliance with County's regulatory requirements, however such approval shall not otherwise be unreasonably withheld or conditioned.

- (4) **Electrical Power, Fiber and Other Utilities.** Lessee shall provide for the provision of all electrical power, telephone, fiber or any other necessary utilities to, at, and for Communication Site Area. Lessee shall pay for all electric power fiber and other utility charges or expenses incurred arising from Lessee's use of Communication Site Area.

5.04 Place of Payment. All payments shall be made payable to Whatcom County Parks & Recreation Department, accompanied by a reference to the Agreement Number and paid to County's remittance address shown in the Notice Section of this Lease. Lessee shall not combine payment for this Lease with payment for any other lease with County, unless Lessee includes an itemized statement with the payment specifying the amount attributable to each lease's Agreement Number.

5.05 Non-Waiver. Acceptance of any other payment after the date it is due shall not be deemed a waiver regarding the obligations to make future payments on time.

5.06 Failure to Pay. Failure to pay any monies due under this Lease beyond the applicable cure period as provided in Section 14.02 constitutes a material breach. County may seek all remedies available. If Lessee fails to pay amounts due under this Lease, County may pay the amount due and recover its cost in accordance with this Lease.

5.07 Late Charge. If County does not receive full Rent payment within fifteen (15) business days of the date due and Lessee has received notice of such, Lessee shall pay to County a late charge equal to Two Hundred Fifty and 00/100 Dollars (\$250.00), to defray the overhead expenses of County incident to the delay. This amount may be increased at Rent Re-valuation to reflect increased overhead costs, which shall be no more than the CPI increase.

5.08 Interest Penalty for Past-Due Rent and Other Sums Owed.

- (1) Interest on all past-due sums shall be charged at the rate of one percent (1%) per month, calculated from the due date, until paid. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (2) If County pays or advances any amounts for or on behalf of Lessee, after first giving Lessee at least thirty (30) days' notice and opportunity to pay such amounts, Lessee shall reimburse County for the amount paid or advanced within thirty (30) days of receipt of an invoice therefore, together with reasonably supporting documentation for the amounts paid or advanced. If Lessee fails to

reimburse the County timely, as provided herein, such paid or advanced amounts shall be subject to the interest provided for in (1) above.

5.09 Referral to Collection Agency and Collection Agency Fees. If County does not receive full payment within thirty (30) days of the due date and upon Lessee's receipt of notice of such, County may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Lessee shall pay collection agency fees in addition to the unpaid amount.

5.10 No Accord and Satisfaction. County may accept payment in any amount without prejudice to County's right to recover the balance of the Rent or pursue any other right or remedy.

5.11 No Counterclaim, Setoff, or Abatement of Rent. Lessee shall pay Rent and all other sums without County providing prior notice or demand. Lessee's payment is not subject to counterclaim, setoff, deduction, defense, or abatement.

SECTION 6 – IMPROVEMENTS AND EQUIPMENT

6.01 New Improvements. Lessee shall obtain prior written approval from County for any Improvements that will be added to Communication Site Area thirty (30) days prior to installation or removal. Such approval shall not be unreasonably withheld, conditioned or delayed.

6.02 New Equipment. Lessee shall notify County of any Equipment that will be added to Communication Site Area thirty (30) days prior to installation of Equipment by submitting a revised site plan for County review.

6.03 Equipment Identification. All equipment at the Facilities Area shall be identified with a FCC and/or National Telecommunications and Information Administration (NTIA) issued license. If the equipment is unlicensed the equipment shall be labeled with transmit and receive frequencies.

6.04 Non-Ionizing Electromagnetic Radiation (NIER). Lessee shall comply with standards or requirements in effect for non-ionizing electromagnetic radiation levels as established by the Environmental Protection Agency (EPA) or other local governing agencies.

6.05 County's Repairs. County shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about Lease Area, or any part thereof, during the Term.

6.06 Plan of Operations. Except in the case of Emergency, thirty (30) days prior to any Work by Lessee, Lessee shall meet with County to develop a written Plan of Operations ("**Plan of Operations**"). Noncompliance with these requirements shall constitute a breach of this Lease and may result in County suspending operations until the breach is remedied.

Lessee shall conduct all Work pursuant to a written Plan of Operations approved in advance by County, which consent shall not be unreasonably withheld. The Plan of Operations shall be consistent with the Survey, and Site Plan. Any change in approved operations shall require a written change in the Plan of Operations and must be approved in advance by the County.

The Plan of Operations shall be consistent with and not interfere with rights of third parties affecting Lease Area, which arose prior to the Original Lease and must comply with all applicable federal, state, county, and other local regulations. The Plan of Operations shall address any activity deemed relevant by County, which shall be at County's sole discretion,

County may deny consent or impose additional conditions reasonably intended to protect and preserve Lease Area, including if Work is for removal of Improvements at the end of the Term.

6.07 Work.

- (1) Modifications to Work may result in County, at its sole discretion, requiring an updated Site Plan.
- (2) At the end of the Term of this Lease, County may waive removal of some or all Lessee-Owned Improvements.
- (3) Prior to Work, Lessee will employ a utility locator service, at no cost to County, to check Communication Site Area for buried utilities.
- (4) Before completing Work, Lessee shall remove all debris and restore Lease Area to an orderly and safe condition. If Work is intended for removal of Improvements at the Termination Date, Lessee shall restore Lease Area in accordance with this Lease.
- (5) Emergency Work. All of Lessee's Work necessitated by an Emergency shall be governed by the terms of this Lease; provided Lessee need not obtain County's

consent prior to commencing such necessary Work, but shall give County notice thereof as soon as is reasonably possible thereafter.

- (6) **Electrical Power.** Electrical power provided to Lease Area by Lessee shall be installed in accordance with all applicable legal requirements and industry standards. Initial installation and any subsequent expansion of the capacity of the power provided to Lease Area shall be subject to County's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed.
- (7) County may impose additional conditions reasonably intended to protect and preserve Lease Area if the Work is for removal of Improvements at the end of the Term of this Lease.

6.08 Minor Modifications Authorized. Lessee may make minor modifications or alterations to Lease Area and Lessee-Owned Improvements as it deems necessary, in its sole discretion, to accommodate use of Lease Area, subject to Lessee obtaining all necessary permits and approvals from applicable authorities for any such minor modifications. County acknowledges that Lessee need not obtain County's consent before making minor modifications to the Lease Area and Lessee-Owned Improvements. Examples of minor modifications would be the maintenance, the addition, repair and removal of any Equipment (excluding antennas and dishes) located on Lessee's towers or within Lessee's buildings, and cable tray modifications, security systems and other similar work located solely within the Facility Use Area. Nothing herein shall permit Lessee to expand Lease Area.

6.09 Government Approvals. Prior to performing any installation or construction work within Lease Area, Lessee shall secure all necessary Government Approvals at its sole expense. County agrees to complete County's portion of the Government Approvals.

6.10 Third-Party Use. Upon County's request, Lessee shall allow third parties to access utility service to install new and maintain existing service and may reasonably condition such consent. Third parties shall own and have responsibility for the new utilities, unless owned by a utility provider.

6.11 Emergency Action.

- (1) **Fire.** If Lessee has actual knowledge of a wildfire occurring on or near Lease Area, Lessee shall immediately report such fire to emergency response authorities by calling 911 and to State, by calling (800) 562-6016 and shall make its on-site

equipment available to help suppress or contain the fire. Lessee is authorized, but not required, to take action reasonably necessary to protect persons and property.

- (2) **Non-Fire Emergencies.** In the event of an emergency (other than fire) requiring immediate action to protect person or property other than fire, Lessee may take reasonable corrective action without prior notice to County. Lessee shall notify County the same business day for non-fire emergencies occurring on a business day and the next available business day for non-fire emergencies occurring after hours, weekends, and holidays. Lessee shall notify the Whatcom County Parks & Recreation Department at (360) 778-5850, and in writing, within five (5) business days after the emergency occurs, to the address indicated in this Lease, of any corrective action taken.

SECTION 7 - INTERFERENCE

7.01 Lessee Electronic Interference. County hereby acknowledge and agree that as of the latter signature date of this Lease, Lessor has no knowledge of interference by Lessee. Lessee warrants that its use of Communication Site Area now and in the future will not cause Electronic Interference. Upon receipt of an Interference Notice from County, Lessee shall immediately take remedial action to eliminate interference caused by Lessee's operations in violation of the terms of this Section.

Lessee shall take all measures necessary to eliminate the interference within forty-eight (48) hours after receipt of the Interference Notice. Lessee shall notify County within twenty-four (24) hours of resolving Electronic Interference.

7.02 County's Electronic Interference. County will provide no Electronic Interference protection during the Term of this Lease. County shall not be responsible for enforcing the FCC's rules, regulations, and licenses, and makes no warranty of electronic noninterference during the Term of this Lease

7.03 County's Physical Interference. County is not responsible for Physical Interference on County-owned lands.

7.04 Cooperation. Upon receipt of an Interference Notice by the other party, County and Lessee shall reasonably cooperate to resolve Electronic Interference or to identify resolutions to Physical Interference.

SECTION 8 - ACCESS ROADS AND ROAD MAINTENANCE

8.01 Road Repair. Lessee shall repair, or cause to be repaired, at its sole cost and expense that damage to the Road Access Area that is caused through the operations of Lessee, including Permittees, which is in excess of that which they would cause through normal and prudent usage of said Road Access Area. Lessee shall notify County within five (5) business days of any damage to the road caused by Lessee and Permittees. Upon notification by County of Lessee-caused damage, Lessee shall provide County with a plan for the repairs within fifteen (15) days.

8.02 Road Maintenance and Repair.

- (1) County shall be responsible for road maintenance of the Road Access Area except as otherwise provided herein. Road maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved.
- (2) In the event of a catastrophe, or the need for extraordinary road maintenance or repair, Lessee shall pay its pro rata share of the cost incurred in maintaining, repairing, or resurfacing said road or portion thereof, as determined by County; provided that Lessee's pro rata share of such costs shall not exceed Five Thousand and 00/100 Dollars (\$5,000.00) without Lessee's prior written consent ("**Max Fee**").
- (3) In the event Lessee's pro rata share of the costs exceeds the Max Fee and Lessee does not waive the Max Fee limitation, County reserves the right to not repair the road, and in such case County shall not guarantee or warrant Lessee's access to Lease Area. Lessee assumes all risk of loss associated with accessing Lease Area.

SECTION 9 - SPECIAL REQUIREMENTS

9.01 Fire. Lessee shall comply with all laws and regulations pertaining to fire protection and suppression and take reasonable care to prevent wildfires from igniting on or spreading onto Lease Area. Measures shall include ensuring all vehicles carry a fire extinguisher of at least a 5 B/C rating and a serviceable shovel and complying with all requirements of the Forest Protection Act (Chapter 76.04 RCW) and its implementing regulations (Chapter 332-24 WAC).

In addition to any liability for negligence, Lessee shall reimburse County for all damages (including loss or damage of timber, and fire suppression costs) resulting from wildfires caused by Lessee or Lessee's Permittees, even if not attributable to negligence by Lessee or its Permittees; provided, however, Lessee shall not be liable for such damages and costs resulting from acts of nature or acts beyond the control of Lessee and its Permittees.

9.02 Hazardous Substances.

- (1) Prohibited Activities. Lessee shall not keep on or about Lease Area any Hazardous Substance unless both of the following applies:
 - (a) The Hazardous Substance is necessary to carry out Lessee's Permitted Use under this Lease; and
 - (b) Lessee fully complies with all federal, state, and local laws, regulations, statutes, and ordinances now in existence or as subsequently enacted or amended pertaining to the use, presence, transportation, or generation of Hazardous Substances.
- (2) Lessee shall immediately assume responsibility for a Hazardous Substance release (spill) caused by Lessee on or adjoining Lease Area. Responsibility includes, but is not limited to the following:
 - (a) Immediately notify all necessary emergency response agencies, as required under federal, state, and local laws, regulations, or policies.
 - (b) Follow emergency response agency notifications and notify County of all spill releases, and Lessee actions completed for spill reporting, and Lessee's actions planned or completed toward spill cleanup as provided in this Lease for Non-Fire Emergencies. At Lessee's sole expense, conduct all actions necessary to mitigate the spill release.
 - (c) Other than performing initial emergency response cleanup and containment actions, obtain approvals in advance of all site cleanup actions (e.g., site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on Lease Area and County Land, in coordination with regulatory agencies and County.

- (d) Be familiar with all necessary Hazardous Substance spill release notification and response mitigation requirements in advance of conducting Lessee operations on Lease Area.
- (3) Lessee shall immediately notify County of any of the following:
- (a) All failures to comply with any federal, state, or local law, regulation, or ordinance, as now enacted or as subsequently enacted or amended with respect to the use, presence, transportation, or generation of Hazardous Substances in, on, about, or adjacent to Lease Area;
 - (b) All inspections of Lease Area by, or any correspondence, orders, citations, or notifications from, any regulatory entity concerning Hazardous Substances affecting Lease Area;
 - (c) All regulatory orders or fines, or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the use, presence, transportation, or generation of Hazardous Substances in, on, about, or adjacent to Lease Area;
 - (d) On request, Lessee shall provide copies to County of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation, or generation of Hazardous Substances in, on, about, or adjacent to Lease Area.
- (4) Indemnity. Lessee shall be fully and completely liable to County, and, to the extent permitted by law, shall indemnify, defend, and save harmless County and its employees, officers, and agents from any and all damages, costs, fees (including attorneys' fees and costs), penalties, and oversight costs arising from Lessee's use, disposal, transportation, generation, and/or sale of Hazardous Substances or that of Lessee's Permittees and for any breach of this Section.
- (5) Notwithstanding the foregoing or any other provision in this Agreement, Lessee shall not be liable or responsible for any environmental condition, including the release of Hazardous Substances, that existed before the execution of the Original Lease, or that otherwise does not result from the activities of Lessee.

9.03 Weed Control. Lessee shall control weeds and vegetation on Lease Area. Weed control shall be approved in writing by County prior to beginning such activities.

9.04 Habitat Conservation Plan (HCP). Lease Area is located within an area that is subject to State's 1997 Habitat Conservation Plan (Habitat Conservation Plan) adopted in connection with Incidental Take Permit No. PRT-812521 as supplemented by Permit No. 1168 (Incidental Take Permit No. PRT-81251 and Permit No. 1168 shall be collectively referred to as ITP). As long as the Habitat Conservation Plan remains in effect, Lessee and Lessee's Permittees shall comply with the terms and conditions set forth in Exhibit H while operating on Lease Area.

9.05 Snow Plowing. Snow plowing shall be permitted only upon County's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

SECTION 10 – ASSIGNMENT

10.01 Assignment. Lessee may, upon notice to Lessor, mortgage or grant a security interest in Lessee's leasehold estate and any Lessee-Owned Improvements, and may make a conditional assignment of this Lease and the Lessee-Owned Improvements to any such mortgagees or holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "**Secured Parties**").

- (1) Lessee shall have the right to license, sublease or assign its rights under this Lease, without the consent of Lessor, upon any of the following conditions:
 - (a) any conditional assignment of this Lease to a Secured Party as described in Section (10.1) above;
 - (b) any license or sublease of a portion of the Communication Site Area and the Tower Facilities in the ordinary course of Lessee's business;
 - (c) an assignment or sublease to an affiliate entity of Lessee; or
 - (d) an assignment to an entity in the business of developing or owning telecommunications towers, provided that any such assignee shall have a net worth equal to or greater than Lessee's, unless otherwise approved in writing by the County.

(2) Any License, sublease or assignment by Lessee of its right under this Lease which is not set forth in (a) – (d) above shall require the consent of the Lessor, which consent shall not be unreasonably withheld, delayed and/or conditioned.

10.02 No Waiver of Right to Consent. The consent of County to any one assignment shall not constitute a waiver of County's right to consent to subsequent assignments, nor shall consent of County to any one assignment relieve any party previously liable as Lessee from any obligations under this Lease that arose before the effective date of the assignment. The acceptance by County of the payment of Rent following an assignment shall not constitute consent to any assignment, and County's consent shall be evidenced only in writing.

10.03 Name Change. If Lessee changes its name, Lessee shall provide County with legal documentation of the name change within sixty (60) days of the effective date of the change.

SECTION 11 - INDEMNITY AND INSURANCE

11.01 Indemnity (Assumption of Liability) and Insurance. From and after the Commencement Date of this Lease, Lessee shall indemnify, defend and hold harmless County, its employees, officers, and agents from any and all liability, damages (including, but not limited to, death, personal injury, and damages to land and other natural resources), expenses, causes of action, suits, claims, costs, fees (including, but not limited to, attorneys' fees), penalties, or judgments, of any nature whatsoever, alleged or arising out of the use, occupation, or control of Lease Area by Lessee and its Permittees except as may arise out of the willful or sole negligent acts or omissions of County or County's elected officials, employees, agents, servants, contractors and sublessees. In case of damages caused by the concurrent negligence of Lessee, its permittees, successors, subcontractors, its successors or assigns, or its agents, servants, or employees and the Lessor, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Lessee, its permittees, successors, subcontractors, its successors or assigns, or its agents, servants, or employees. Nothing contained in this Section or this Agreement shall be construed to create a right in any third party to indemnification or defense.

Lessee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless County and its agencies, officials, agents, and employees. This Section shall not in any way limit Lessee's liability under Hazardous Substances Section, and this Section shall not apply to any liability, damages, expenses, causes of action, suits, claims, costs, fees, penalties, or judgments, of any nature whatsoever, arising out of any events, obligations, rights, or actions described in Hazardous Substances Section.

The Parties agree all indemnity obligations shall survive the completion, expiration or termination of this Lease.

11.02 Insurance.

- (1) Required. Lessee shall, at all times during the Term of this Lease at its sole cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of this Lease at County's option. Lessee shall require all contractors and subcontractors to obtain and maintain substantially the same coverage as required of Lessee. Failure by the County to confirm compliance with the Lessee's insurance requirements shall not be considered a waiver or acceptance of Lessee's insurance obligations.
- (2) Insurers. All insurance and surety bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better, in the most recently published edition of *Best's Report*. Any exception shall be reviewed and approved by the County's Risk Manager before the Commencement Date. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.
- (3) Notice of Cancellation. Upon receipt of notice from its insurer(s) Lessee shall provide the County with thirty (30) days' prior written notice of cancellation of any required coverage.
- (4) Certificate of Insurance and Endorsements. Before beginning operation, Lessee shall furnish County with a certificate(s) of insurance and blanket additional insured endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Lease. The certificate of insurance shall reference Whatcom County and its officials and employees, Whatcom County Parks & Recreation Department, and the Agreement Number.

INSURANCE TYPES & LIMITS: The limits of insurance, which, upon prior written notice to, review and acceptance by Lessee, may be increased by County, as deemed necessary, shall not

be less than as follows, and all limits hereunder can be met by a combination of primary and umbrella/excess policies:

Commercial General Liability (CGL) Insurance: Lessee shall purchase and maintain commercial general liability insurance with a limit of \$2,000,000 per occurrence and \$4,000,000 general aggregate including premises-operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

Employer's Liability ("Stop Gap") Insurance: Lessee shall purchase and maintain employer's liability insurance and, if necessary with limits of \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, \$1,000,000 disease policy limit.

Commercial Automobile Liability Insurance: Lessee shall purchase and maintain commercial automobile liability insurance with a combined single limit of \$1,000,000 each accident for bodily injury and property damage covering all owned, non-owned and hired vehicles and shall include contractual liability coverage. Lessee waives all rights of subrogation against County for the recovery of damages to the extent they are covered by commercial auto liability .

Industrial Insurance (Workers' Compensation): Lessee shall comply with Title 51 RCW by maintaining workers' compensation insurance for its employees. Lessee waives all rights of subrogation against County for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability or automobile liability insurance. Lessee waives its Title 51 RCW immunity to the extent it is required by its indemnity obligation under this Lease.

Builder's Risk Insurance:

- (a) During the period construction is in progress and until completion of the project and acceptance by County, any contractor or subcontractor of Lessee shall buy and maintain, or shall cause its contractors to buy and maintain, in force builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form and in any amount equal to the value of the completed building, subject to subsequent modifications to that sum. The insurance shall be written on a replacement cost basis. This insurance shall name as insured Whatcom County, Whatcom County Parks & Recreation Department, Lessee, and all subcontractors and sub-subcontractors in the Work.

- (b) Insurance required in this subsection 11.02(a) above shall be written to cover all risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse.
- (c) Insurance required in this subsection 11.02(a) above shall cover the entire Work at Lease Area, including reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from Lease Area but intended for use at Lease Area, and shall also cover portions of the Work in transit.
- (d) The policy shall include as insured property scaffolding, false work, and temporary buildings located at Lease Area. The policy shall cover the cost of removing debris, including demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (e) The responsibility for paying the part of any loss not covered because of application of deductible(s) shall be the responsibility of Lessee or its contractor(s), as applicable. If any part of any loss is not covered because of the application of a deductible such loss will be paid by Lessee or its contractor(s), as applicable.

Pollution Legal Liability Insurance:

- (a) Lessee shall procure and maintain for the duration of this Lease pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. Lessee shall maintain coverage in an amount of at least:
 - (i) \$2,000,000 each occurrence for Lessee's operations at the Lease Area and \$4,000,000 general aggregate or policy limit, if any.
- (b) Such insurance may be provided on an occurrence or claims-made basis. If such policy is provided on a claims-made basis the limit shall be \$4,000,000 per claim and aggregate.

- (c) Whatcom County, Whatcom County Parks & Recreation Department, its officials, and employees, shall be included as additional insureds as their interest may appear under this Agreement by endorsement on the pollution legal liability insurance policy.

ADDITIONAL PROVISIONS:

Additional Insured, Primary and Noncontributory: Whatcom County, Whatcom County Parks & Recreation Department, its officials and employees shall be included as additional insureds as their interest may appear under this Agreement by endorsement on all commercial general liability, commercial automobile liability and pollution liability insurance policies required or maintained pursuant to this Lease. Lessee's insurance shall be primary and County's noncontributory.

Self-Insurance: In lieu of the coverage required under this Section 11, County shall accept evidence of self-insurance by Lessee, provided Lessee provides a statement by a Certified Public Accountant or actuary that demonstrates, to the reasonable satisfaction of County, that Lessee's financial condition is adequate to self-insure any of the required insurance coverage. Lessee must describe its financial condition and the self-insured funding mechanism. County may require Lessee to provide the above from time to time to ensure Lessee's continuing ability to self-insure. If at any time Lessee does not satisfy the self-insurance requirement, Lessee shall immediately purchase insurance as set forth under this Section.

Waiver: Lessee waives all rights of subrogation against County for recovery of damages to the extent these damages are covered by insurance policies required or maintained pursuant to this Lease.

Coverage Limits: Coverage limits shall be the limits identified in this Agreement.

Occurrence Based: All insurance shall be occurrence based unless stated otherwise.

Subcontractors: Lessee's contractors and subcontractors shall include the County as an additional insured, provide primary insurance coverage and waiver of subrogation with County's insurance non-contributory.

SECTION 12 - DAMAGE OR DESTRUCTION

12.01 Force Majeure. County's or Lessee's failure to perform any of its obligations under this Lease shall be excused if due to causes beyond its control and without the fault or negligence of

County or Lessee, including but not restricted to acts of God, acts of the public enemy, acts of any government, vandalism, fires, lightning, floods, epidemics, or labor strikes.

12.02 Notice and Repair.

- (1) Notice to County. In the event of damage to or destruction of Lease Area or Improvements located within Lease Area, Lessee shall give written notice to County within fourteen (14) business days. County does not have actual knowledge of the damage or destruction without Lessee's written notice.
- (2) Repair. Unless otherwise agreed in writing, if any repairs are necessitated by the fault or negligence of Lessee and Permittees. Lessee shall reconstruct, repair, or replace such damaged portions of Lease Area and Improvements on Lease Area as nearly as possible to their condition immediately prior to the damage or destruction in accordance with this Lease.

12.03 County's Claim. County does not waive any claims for damage or destruction of Lease Area unless County provides written notice to Lessee of each specific claim waived.

12.04 Insurance Proceeds. Lessee's duty to reconstruct, repair, or replace any damage or destruction of Lease Area or any Improvements on Lease Area is not conditioned upon the availability of any insurance proceeds to Lessee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Insurance Section.

12.05 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.06 Default at the Time of Damage or Destruction. If Lessee is in default under the terms of this Lease at the time damage or destruction occurs, County may elect to terminate the Lease and County then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

12.07 County's Remedy. If Lessee fails to remedy the condition of Lease Area in a timely manner, County may take steps reasonably necessary to remedy Lessee's failure. Within sixty (60) calendar days of demand by County, Lessee shall pay all costs of County's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on Lease Area, lost revenue resulting from the condition of Lease Area, and administrative costs associated with County's remedy.

12.08 Debt to County. If County must pay any tax, assessment, penalty, or interest because of the failure of Lessee to pay such taxes, assessments, penalties, or interest that Lessee is obligated to pay pursuant to the terms of this Lease, such obligations shall be considered a debt to County. Lessee shall pay within thirty (30) days of demand by County. Notwithstanding, the foregoing, County must notify Lessee within one (1) year of any such debt occurring, and any claim not made within the prescribed time period shall be deemed satisfied and unenforceable against Lessee.

SECTION 13 - CONDEMNATION

13.01 Termination Upon Complete Taking. If all of Lease Area is taken by any public authority under the power of eminent domain, this Lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation.

13.02 Termination Upon Partial Taking. If any part of Lease Area is so taken and, in the opinion of either County or Lessee, it is not economically or functionally feasible to continue this Lease in effect, either Party may terminate this Lease. Such termination by either Party shall be made by notice to the other given not later than thirty (30) days after possession is so taken, or the termination to be effective as of the later of thirty (30) days after said notice or the date possession is taken.

13.03 Continuation Following Partial Taking. If part of Lease Area is taken and neither County nor Lessee elects to terminate this Lease, or until termination is effective, as the case may be, Rent shall be abated in the same proportion as the portion of Lease Area so taken bears to the whole of Lease Area when the proportion calculated amounts to Two Thousand Dollars (\$2,000) or more. In no case shall Rent be less than Two Thousand Dollars (\$2,000); this minimum amount shall be increased by 5 percent (5%) every year after the Commencement Date.

13.04 Relocation. In the event of either a complete taking or a partial taking through condemnation, County will cooperate with Lessee to attempt to reasonably relocate part or all of Lease Area.

13.05 Damage Award. All damages awarded for the taking or damaging of all or any part of Lease Area, or County Owned improvements thereon, shall belong to and become the property of County, and Lessee hereby assigns to County any and all claims to such award. However, County shall not claim any interest in or to Personal Property or authorized Improvements. To

the extent not inconsistent with this Section, Lessee may, on its own behalf, make a claim to the condemnation authority for losses related to its equipment, relocation costs, business interruption costs, damages, and losses in any condemnation.

SECTION 14 - DEFAULT

14.01 Default Defined. Lessee is in default of this Lease on the occurrence of any of the following:

- (1) Failure to make payments when due;
- (2) Failure to comply with applicable law, regulation, or order of any lawful governmental authority;
- (3) Failure to comply with any provision of this Lease;
- (4) Effective date of bankruptcy proceedings by or against Lessee or the appointment of a trustee or receiver of Lessee's property; or
- (5) Involuntary assignment by operation of law.

14.02 Right to Cure.

- (1) Event of Default. A default becomes an "Event of Default" if Lessee fails to cure the default within the applicable cure period following County's written notice of default. Upon an Event of Default, County may seek remedies under this Lease.
- (2) Cure Period. Unless expressly provided elsewhere in this Lease, the cure period is thirty (30) days to cure monetary defaults and forty-five (45) days to cure non-monetary defaults.
- (3) Non-Monetary Default. For non-monetary defaults not capable of cure within forty-five (45) days, County will not unreasonably withhold approval of a reasonable alternative cure schedule. Lessee must submit to County a cure schedule within thirty (30) days of Lessee's receipt of a notice of default. The default is not an Event of Default if County approves the schedule and Lessee works diligently and in good

faith to execute the cure. The default is an Event of Default if Lessee fails to timely submit a schedule or fails to cure in accordance with an approved schedule.

- (4) Repeated Defaults. Should repeated defaults occur, County may elect to deem a default by Lessee as an Event of Default.
- (5) In the case of a breach of any covenant or term hereof by the Lessor, the Lessor shall have all rights of notice and cure afforded Lessee in this Lease,

14.03 Remedies. The remedies specified under this Section 14.03 are not exclusive of any other remedies or means of redress to which County is lawfully entitled for Lessee's breach or threatened breach of any provision of this Lease.

- (1) Remove Lessee. Upon an Event of Default, County may terminate this Lease and remove Lessee by any remedy at law.
- (2) County's Entry to Restore. If the Event of Default (1) arises from Lessee's failure to comply with restrictions on Permitted Use and operations under Section 2.01 (Permitted Use of Communication Site) or (2) results in damage to natural resources or Lease Area, County may enter Lease Area without terminating this Lease to (i) restore the natural resources or Lease Area and charge Lessee restoration costs and/or (ii) charge Lessee compensatory damages. On demand by County, Lessee shall pay all costs and damages.
- (3) County's Right to Relet. Upon an Event of Default, if County terminates this Lease, County shall have the right to relet Lease Area.

SECTION 15 - NOTICE

15.01 Designated Contact. Formal notices, required or desired, shall be in writing and delivered personally or by messenger or sent by USPS certified mail, return receipt requested, postage prepaid, and shall be sent to the respective addressee at the respective address set forth below or to such other address as the Parties may specify in writing.

Billing invoices and other Rent matters will be sent to the "Primary Contact" only.

County Contact:

Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

Director
Whatcom County Parks & Recreation Department
3373 Mount Baker Highway
Bellingham WA 98226
(360) 778-5850

Lessee Primary Contact:

Cellco Partnership
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

With a copy to:

American Tower
Attn: Land Management
10 Presidential Way
Woburn MA 01801

15.02 Change in Contact. Each Party shall notify the other Party within fifteen (15) business days of any change of address, business name, contact person's name, or other changes that may affect this Lease.

15.03 Date Received. Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon date of delivery as indicated on the return receipt.

SECTION 16 – GENERAL PROVISIONS

16.01 Non-waiver. Waiver by either Party of strict performance or any provisions of this Lease shall not be a waiver of nor prejudice the Party's right to require strict performance of the same provision in the future or of any other provision.

16.02 Liens. Lessee shall not suffer nor permit any lien to be filed against Lease Area or Lessee's leasehold interest in Lease Area, (excluding Personal Property by reason of work, labor, services, or materials performed or supplied to Lessee or anyone holding Lease Area or any part thereof under this Lease. If any such lien is filed against Lease Area or Lessee's leasehold interest, (excluding Personal Property) by reason of work, labor, services, or materials performed or supplied to Lessee or anyone holding Lease Area or any part thereof under this Lease, Lessee

Whatcom County Parks
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shall cause the same to be discharged of record within thirty (30) days after the date of filing the same unless other arrangements are authorized in writing by County. Lessee shall indemnify County for any costs, damages, or expenses (including attorneys' fees) incurred as a result of the filing of such liens or in obtaining their discharge whether such costs, damages, or expenses were incurred prior or subsequent to the Termination Date.

16.03 Preservation of Markers. Any legal land subdivision survey corners, reference points, or monuments are to be preserved. If such are destroyed or disturbed by Lessee or Lessee's Permittees, Lessee shall reestablish them by a licensed land surveyor in accordance with U.S. General Land Office standards at their own expense. Corners, reference points, or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this Lease must be adequately referenced and/or replaced in accordance with RCW 58.24.040 (8). Such references must be approved by State of Washington, Department of Natural Resources prior to removal of said corners, reference points, or monuments.

16.04 Proprietary Information/Public Disclosure. Any materials and other written and electronic records submitted by Lessee to County, or produced or utilized by the County or jointly by Parties for this Lease, may be or are subject to disclosure under the Public Records Act, Chapter 42.56 RCW.

Any submitted materials or records that Lessee claims are exempt from disclosure under the Public Records Act must be clearly designated as such. Each page, or portion thereof, that contains exempt material must be identified and the particular exemption from disclosure upon which Lessee is making the claim must be identified by the statutory citation number. County will consider Lessee's request for exemption from disclosure; however, County will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. The portion of a document claimed as exempt must qualify for exempt status as identified in RCW 42.56. Lessee should selectively identify each record or portion of record thought to be exempt rather than marking all records as exempt from disclosure. If a public records request is made regarding materials that Lessee has claimed are exempt, County will provide Lessee with notice of the request and allow Lessee ten (10) business days to seek a court injunction against the requested disclosure prior to County fulfilling the public records request. Lessee is liable for any costs, fees, or judgement for failure to release records to the County which are deemed subject to disclosure under the Public Records Act if records were within or in the control or possession of the Lessee and were not provided as required by the Public Records Act.

16.05 Exhibits. This Lease is subject to the terms and conditions of Exhibits referenced herein, which are attached hereto and by this reference made a part hereof.

List of Exhibits

- “A” Depiction of Communication Site Area and Utility Area
- “B” Lessee-Owned Improvements
- “C” Depiction of Road Access Area
- “D” Legal Description of County Land
- “E” Memorandum of Lease
Attached Exhibit E-1
- “F” Surrender of Leasehold
- “G” Rent Calculation
- “H” Requirements of the Habitat Conservation Plan

16.06 Nondiscrimination. Lessee and County, for themselves, their successors, and assigns as a part of the consideration hereof, do hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state, or local laws applicable to County’s Parcel, including, without limitation, Chapter 49.60 RCW. Lessee shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 RCW and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of the Lease and may result in ineligibility for further agreements between the Parties.

16.07 Severability. The invalidity of any provision of this Lease shall not affect the validity of the remaining provisions.

16.08 Authority. Lessee and the person or persons executing this Lease on behalf of Lessee represent that Lessee is qualified to do business in the state of Washington, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon County’s request, Lessee shall provide evidence satisfactory to County confirming these representations.

16.09 Successors and Assigns. This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

16.10 Entire Agreement. This Lease, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous

agreements, promises, representations, and statements relating to this transaction or to Lease Area.

16.11 Time Is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

16.12 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Whatcom County, Washington.

16.13 Attorney Fees. Each Party shall be responsible for their own attorney fees in the event of a dispute arising out of this Lease with the exceptions for Hazardous Substances, Indemnity (Assumption of Liability) and Insurance, and Liens.

16.14 Headings. The headings in this Lease are for convenience only and shall not limit, enlarge, or affect the scope and intent of the provisions of this Lease.

16.15 Interpretation. This Lease has been submitted to the scrutiny of all Parties and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel. Section numbers or titles are not to be considered in interpreting this lease.

16.16 Statutory Reference. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

16.17 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

16.18 Survival. Any obligations of Lessee not fully performed upon termination of this Lease do not cease but continue as obligations of the Lessee until fully performed.

16.19 Safety. Lessee shall operate and maintain the Lease Area free from injury, harm, danger or loss to personal property whether deliberate or accidental.

Each person signing this Lease represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Lease. Each party represents and warrants to the other that the execution and delivery of the Lease and the performance of such party's obligations hereunder have been duly authorized and that the Lease is a valid and legal agreement binding on such party/entity and enforceable in accordance with its terms.

Signed this ___ day of _____, 20__

SIGNATURE PAGES FOLLOW

Cellco Partnership d/b/a Verizon Wireless
By: ATC Sequoia LLC, a Delaware limited liability company
Title: Attorney-in-Fact
UBI no. 602057104

Carol Maxime
Signature

Name: Carol Maxime

Title: Senior Counsel, US Tower

3/13/2020

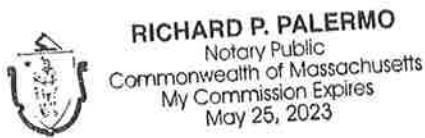
Address: 10 Presidential way
City/State: woburn, MA
Zip: 01801
Phone: _____

STATE OF massachusetts
SS

COUNTY OF Middlesex

On this 16 day of march, 2020, before me, the undersigned Notary Public, personally appeared Carol maxime, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

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



Richard Palermo
Name (Print) _____
NOTARY PUBLIC, in and for the State of massachusetts, residing at Wilmington, MA
My Commission expires _____

Approved as to Form: _____
WHATCOM COUNTY

Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

Whatcom County Executive



Michael McFarlane, Director
Parks & Recreation Department

Approved as to Form:



Senior Deputy Prosecuting Attorney

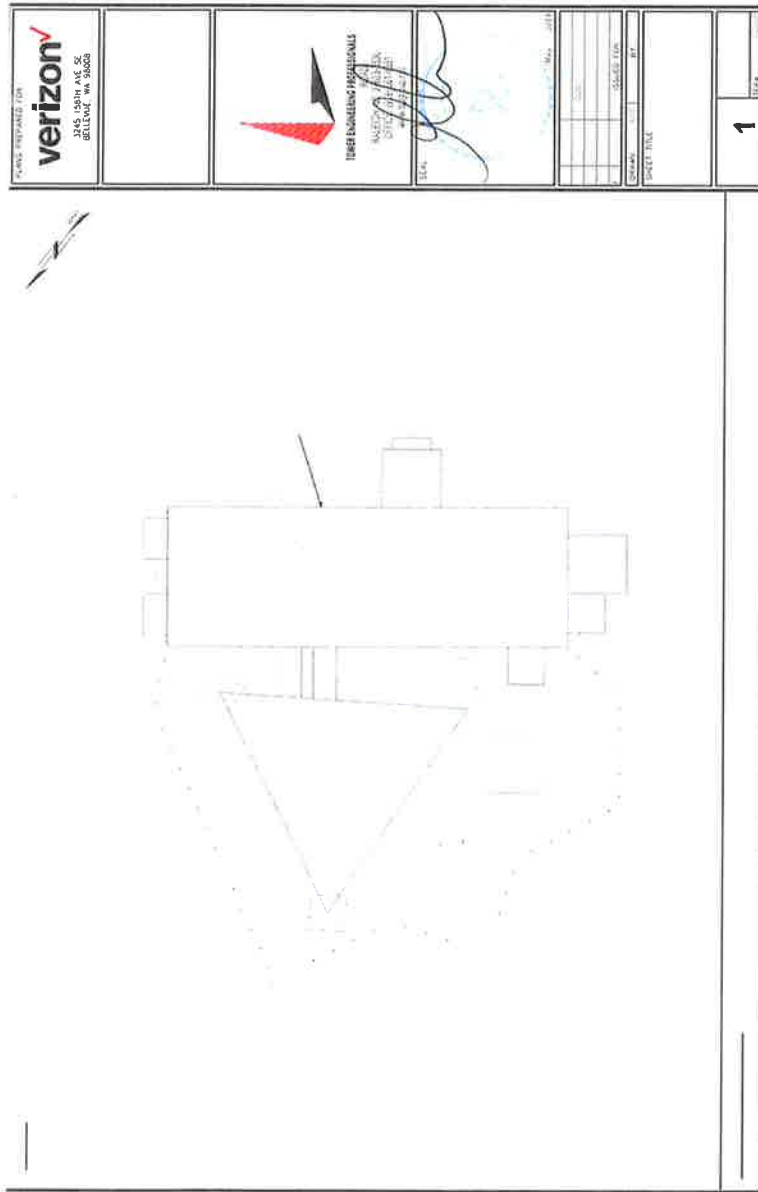
State of Washington)
) ss.
County of Whatcom)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive of Whatcom County, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

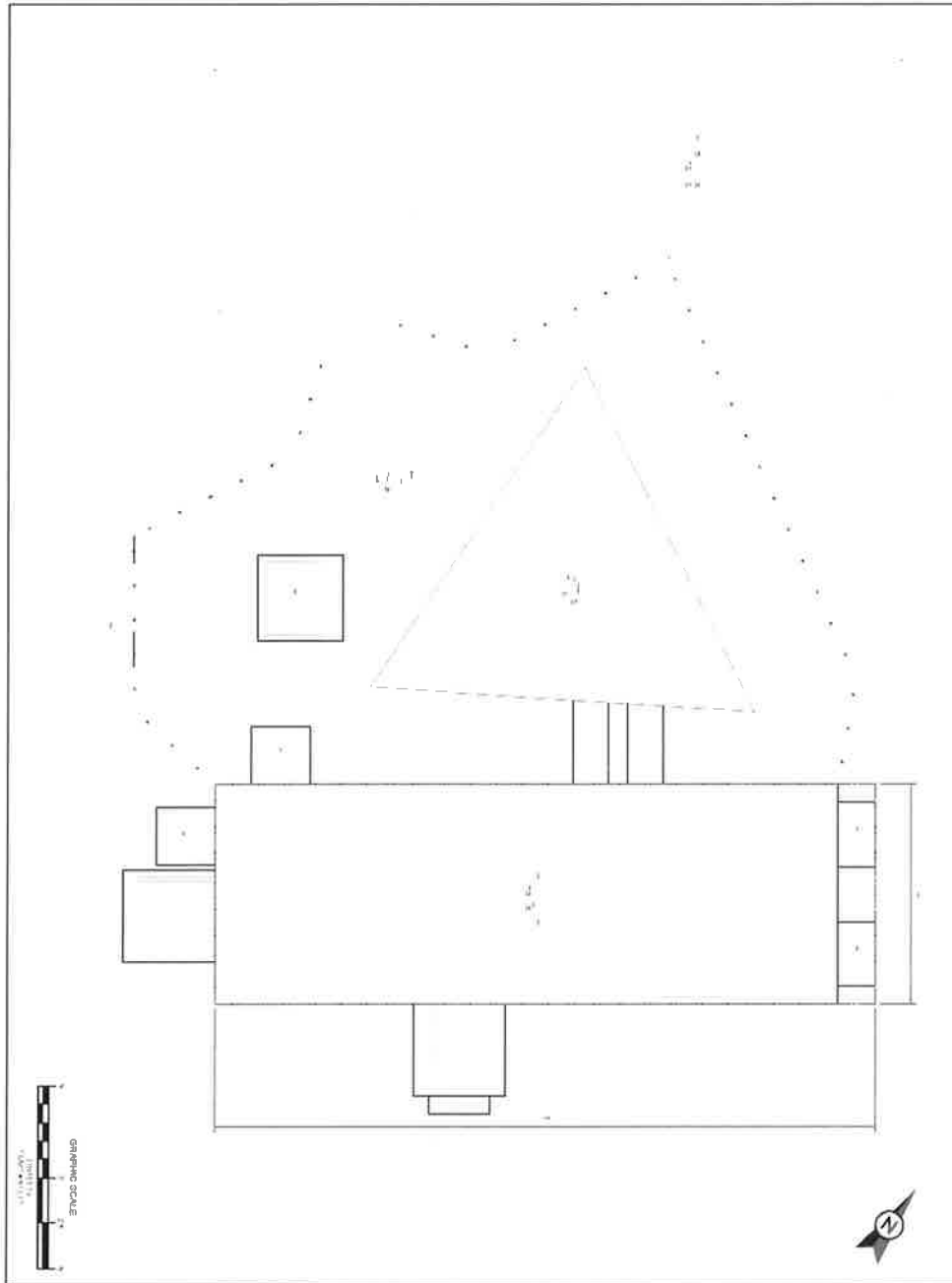
Name (Print) _____
NOTARY PUBLIC, in and for the State
of Washington, residing at Bellingham
My Commission expires:

**EXHIBIT A
DEPICTION OF COMMUNICATION SITE AREA AND UTILITY AREA**



Whatcom County Parks
 Verizon Communication
 Tower Lease Agreement No.
 410192 / 103042

**EXHIBIT B
LESSEE-OWNED IMPROVEMENTS**

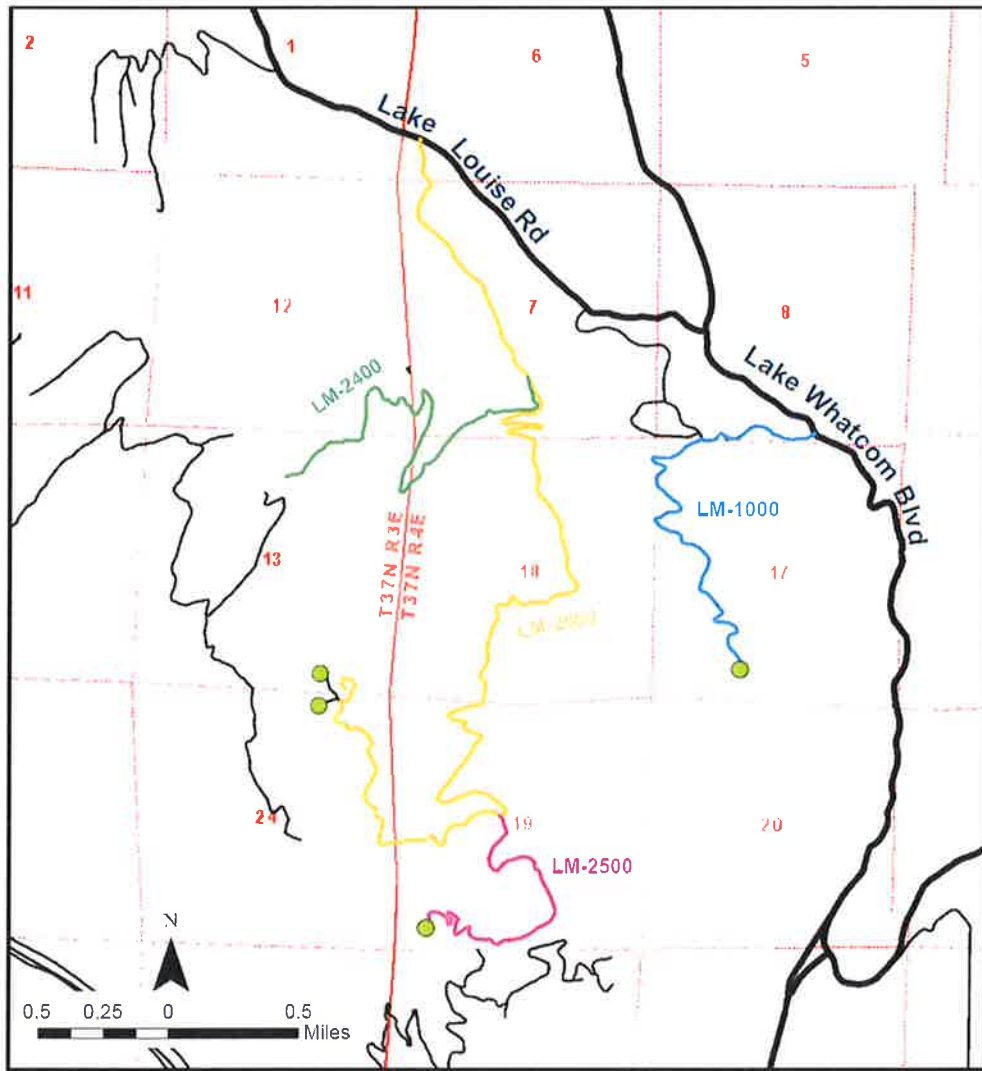


Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

EXHIBIT C DEPICTION OF ROAD ACCESS AREA

Lookout Mountain Forest Preserve - Tower Access

Township 37 North, Range 3 East and Township 37 North, Range 4 East, W.M., Whatcom County



Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

Road access granted on LM-2000 and LM 2500

EXHIBIT D
LEGAL DESCRIPTION OF COUNTY LAND

That portion of the Southwest quarter of Section 19, Township 37 North, Range 4 East, W.M., described as follows:

Beginning at the existing Southeast corner of said subdivision, being monumented as shown on record of survey recorded in Volume 1 Surveys, Page 34, Records of Whatcom County Washington;

Thence N 64°46'13" W (Grid Azimuth based on GPS observations from Washington State Department of Transportation control stations) a grid distance of 1,759.57 feet (1,759.79 ground distance based on a combination factor of 0.9998750) to the true point of beginning of the herein described parcel and a point on the North line of the existing U.S. West New Vector Group easement, as disclosed and shown in a document recorded under recording No. 1603153, record of Whatcom County, Washington, distant thereon 40.00 feet from the Northeast corner thereof:

Thence N 89°26'03" W along the North line of said U.S. West easement, as surveyed by W. Brickey in 1988, a distance of 50.00 feet;

Thence N 00°33'57" E a distance of 50.00 feet;

Thence S 89°26'03" E a distance of 50.00 feet;

Thence S 00°33'57" W a distance of 50.00 feet to the true point of beginning

Return to:

Attention: _____
Re: _____ Lease
Address: _____

MEMORANDUM OF LEASE- EXHIBIT E

Lessor: Whatcom County

Lessee: Cellco Partnership d/b/a Verizon Wireless

Abbreviated Legal Description: _____
Assessor's Tax Parcel ID#: _____
Recording Numbers of Prior Recorded Documents: (Add AFN for Survey)
County: _____ State: _____

This Memorandum of Lease is entered into on this ____ day of _____, 2020, by and between **Whatcom County, acting by and through its Parks & Recreation Department** having offices for the transaction of business at 3373 Mount Baker Highway, Bellingham, Washington 98226 (hereinafter referred to as "**Lessor**") Cellco Partnership d/b/a Verizon Wireless (hereinafter referred to as "**Lessee**").

1. Lessor and Lessee entered into a Communications Site Land Lease Agreement ("**Lease**") on the ____ day of _____, 2020, on file with the Whatcom County Parks & Recreation Department in Bellingham, Washington under contract number _____. Lessor grants to Lessee a lease for a communication site, access to the site and rights to install utilities to serve the site. All of the foregoing is set forth in the Lease.

2. The term of this Lease is twenty (20) years, beginning on the April 1, 2022, and ending on the March 31, 2040 unless terminated earlier by Lessee or Lessor under the terms of the Lease.

Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

3. The land being leased, the access being granted and the utility rights granted to Lessee are legally described in that survey recorded in Whatcom County on _____ under Auditor's File Number _____.

4. Lessee, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Lease Area (as defined in the Lease), all as more particularly described therein. In connection with these responsibilities, Lessee has also granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Lessee, all as more particularly set forth in the POA.

5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease as of the day and year first above written.

"LESSOR"

Whatcom County, acting by and through the County Executive

By: _____
Print Name: _____
It's: County Executive _____
Date: _____

COUNTY ACKNOWLEDGEMENT

State of Washington)
) ss.
County of Whatcom)

I certify that I know or have satisfactory evidence that Satpal Sidhu is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Executive of Whatcom County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2020.

Notary Signature: _____
Printed Name: _____
Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

EXHIBIT E-1
to the MEMORANDUM OF LEASE

The Legal Description of the real property on which Lessee's leased area, and associated access and utility rights, are located is set forth in that certain Record of Survey filed in Whatcom County on 5/23/88 under Auditor's File Number 1603153, and includes all of the following:

That portion of the Southwest quarter of Section 19, Township 37 North, Range 4 East, W.M., described as follows:

Beginning at the existing Southeast corner of said subdivision, being monumented as shown on record of survey recorded in Volume 1 Surveys, Page 34, Records of Whatcom County Washington;

Thence N 64°46'13" W (Grid Azimuth based on GPS observations from Washington State Department of Transportation control stations) a grid distance of 1,759.57 feet (1,759.79 ground distance based on a combination factor of 0.9998750) to the true point of beginning of the herein described parcel and a point on the North line of the existing U.S. West New Vector Group easement, as disclosed and shown in a document recorded under recording No. 1603153, record of Whatcom County, Washington, distant thereon 40.00 feet from the Northeast corner thereof:

Thence N 89°26'03" W along the North line of said U.S. West easement, as surveyed by W. Brickey in 1988, a distance of 50.00 feet;

Thence N 00°33'57' E a distance of 50.00 feet;

Thence S 89°26'03" E a distance of 50.00 feet;

Thence S 00°33'57" W a distance of 50.00 feet to the true point of beginning

Cellco Partnership d/b/a Verizon Wireless
By: ATC Sequoia LLC, a Delaware limited liability company
Title: Attorney-in-Fact

By: *Carol Maxime*
Print Name: Carol Maxime

Its: _____
Date: Senior Counsel, US Tower

3/13/2020

LESSEE ACKNOWLEDGEMENT

STATE OF massachusetts
) ss
COUNTY OF middlesex

On this 16 day of march, 2020, before me, the undersigned Notary Public, personally appeared Carol maxime, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

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

Notary Signature: *Richard P. Palermo*
Printed Name: Richard P. Palermo
Notary Public in and for the State of massachusetts
residing at: Lynnfield, MA
My appointment expires: _____



RICHARD P. PALERMO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 25, 2023

**EXHIBIT F
SURRENDER OF LEASEHOLD**

To the Director of Parks & Recreation:

_____ is presently the "Lessee" under that certain COMMUNICATION SITE LAND LEASE, Agreement No. _____ ("Lease"), with the _____, Whatcom County, acting by and through the Parks & Recreation Department, as the "Lessor," for use of a portion of that certain real property known at the _____ Communication Site, in Whatcom County, State of Washington, which real property is more specifically identified in that certain Memorandum of Lease ("MOL") recorded in the _____ County Auditor's Office on _____, 2020, as Document Number _____.

Lessee hereby notifies Lessor of Lessee's intent to terminate the Lease, the effective termination date for which shall be one hundred eighty (180) days after the date Lessor receives this notice. Concurrently with the effective termination date of the Lease, Lessee quitclaims and surrenders to Lessor any and all leasehold and other real property interests Lessee has in and to the real property identified in the MOL.

The reason for termination of the Lease and surrender of all real property interests is that Lessee no longer has need to use the _____ Communication Site.

[Insert Current Lessee Name]

Signed this __ day of _____, 20__.

Name: _____
Title: _____

It is hereby ordered that the foregoing notice of termination and surrender be accepted and that certain COMMUNICATION SITE LEASE, Agreement No. _____, be canceled effective upon signature of the County Executive so noted.

WHATCOM COUNTY, acting by and through the
COUNTY EXECUTIVE

Signed this __ day of _____, 20__.

Name: _____

Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

LESSEE ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of _____ County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Signature: _____
Print Name: _____
Notary Public in and for the State of _____,
residing at _____
My appointment expires: _____

COUNTYS ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 20____, personally appeared before me Jack Louws, to me known to be the Executive of Whatcom County, who executed the within and foregoing instrument on behalf of Whatcom County, and acknowledged said instrument to be the free and voluntary act and deed of the County for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

Dated: _____

Notary Signature: _____
Print Name: _____
Notary Public in and for the State of Washington, residing at _____
My appointment expires: _____

Whatcom County Parks
Verizon Communication
Tower Lease Agreement No.
410192 / 103042

**EXHIBIT G
RENT CALCULATION**

Annual Rent: Adjusted to begin 4/1/22. As per Lease, to be increase 3%annually.

Item	Derivation	Annual Amount
Facility Site Area (up to 2,500 sq. ft.)	\$22,801.86 includes base tenant Verizon Wireless (2019 rate) Rate adj. for 2022	\$24,190.80
Each additional User (tenant)	\$3,000 each	
Annual Road Use Fee	\$1,000 (2019 rate) Rate adj. for 2022	\$1,060.90
Each Additional Road user (tenant)	\$250 ea.	
Leasehold Tax	12.84% /year (Verizon Pays Directly to WA State)	N/A

Total: \$25,251.70

Additional Payment: Due upon lease approval by County

Item	Derivation	One Time Payment
Signing bonus	ATC letter of 4.19.19	\$ 15,000

Total: \$15,000

EXHIBIT H
REQUIREMENTS OF THE HABITAT CONSERVATION PLAN

1. Lessee shall immediately notify County of new locations of Permit species covered in the Incidental Take permit (ITP) that are discovered within Lease Area covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; and Oregon silver spot butterflies. In all circumstances notification must occur within a 24-hour time period.

2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within Lease Area the Lessee shall immediately notify County. In all circumstances notification must occur within a 24-hour time period. Lessee may be required to take certain actions to help County safeguard the well-being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by County.

3. Lessee shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the Whatcom County Parks & Recreation Office) in all correspondence and reports concerning Permit activities and any Forest Practices Applications.