

ORDINANCE No.

118737

COUNCIL BILL No.

111865

AN ORDINANCE authorizing agreements for the use of City real and personal property for siting facilities and other equipment for wireless communication transmission facilities by commercial communication services providers and stating that the limitations of Seattle Municipal Code Section 3.18.160 are not applicable to such agreements.

COMPTROLLER FILE No.

Introduced: SEP - 8 1997	By: PODLODOWSKI
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Referred:	To:
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Reported: 9-29-97	Second Reading:
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Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Law Department

over size
Attachments

The City of Seattle

REPORT

Honorable President:

Your Committee on Technology & Laborto which was referred the within Council Bill No. _____
report that we have considered the same and respect2-0 DO PASS9-29-97 Full Council Action

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Law Department

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Attachments

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on TECHNOLOGY & LABOR 9/27

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommend that the same:

2-0 DO PASS

9-29-97 Full Council Action: Pass 9-0

Committee Chair

SMEAD 73 YSP 17117

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ORDINANCE 118737

AN ORDINANCE authorizing agreements for the use of City real and personal property for siting facilities and other equipment for wireless communication transmission facilities by commercial communication services providers and stating that the limitations of Seattle Municipal Code Section 3.18.160 are not applicable to such agreements.

WHEREAS, the City Council, upon recommendation of the Mayor, adopted Resolution 29344, encouraging the use of City real property and/or facilities in siting wireless facilities when appropriate and when disruptive impacts on neighborhoods will be minimal; and establishing guidelines for the siting of wireless facilities on City property, a process for approval or disapproval of siting proposals and a status reporting process.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. City departments with real property jurisdiction, control or leasing authority, (hereafter each referred to as the "Department") are authorized, through their respective directors or superintendents appointed by the Mayor and confirmed by the City Council or interim directors who have been appointed but not yet confirmed, to negotiate and execute Wireless Communications Site Agreement(s) ("Site Agreement") for the use of real or personal property owned, leased, or controlled by the City in siting facilities and other equipment for wireless communication transmission by licensed commercial mobile service providers, wireless data services exempt from FCC license requirements, and licensed commercial common carrier wireless exchange access services. The limitations of Seattle Municipal Code Section 3.18.160 (Authority to negotiate and execute leases) shall not apply to Site Agreements authorized by this section. This ordinance does not apply to the use by a city department or agency of City real or personal property.

Section 2. All such agreements shall be in accordance with established Guidelines for the Siting of Wireless Facilities on City Property (Resolution 29344) and other adopted City policies affecting real property management, reuse and disposition. Where the property or facility is located within the City of Seattle limits, such agreements shall require compliance with the City's Land Use

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1 and Zoning Code (SMC Chapter 23), SEPA Policies and Procedures (SMC 25.05), Radio Frequency
2 Radiation Ordinance (SMC 25.10). Where the City property is located outside the City's limits, such
3 agreements shall comply with applicable requirements of the local jurisdiction where the property is
4 located. All such agreements shall be substantially in the form of the Site Agreement, attached hereto
5 as Exhibit "A"; except, the Department is authorized to modify the Special Terms and Conditions
6 within the Site Agreement as negotiated by the Department.

7 Section 3. Agreement terms may be established by the Department for an initial term of up to
8 five (5) years with a maximum of three (3) five (5)-year renewal options. The term of any such
9 agreement shall not exceed twenty years.

10 Section 4. Rental rates for wireless communications site agreements shall be established at fair
11 market value, to be determined by the Department. Any applicable local and state taxes shall be
12 charged in addition to the rental rate.

13 Section 5. Additional fees and/or charges may be established by the Department to recover
14 actual costs of processing the application, including engineering review, inspection and appraisal cost,
15 administration of the agreement, providing on-site services, and/or other direct or indirect costs.

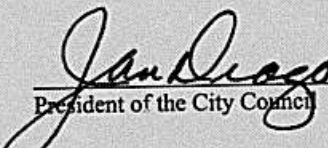
16 Section 6. The Department is authorized to accept telecommunications services, as set forth in
17 the Site Agreement, in lieu of cash rental payment; however, such services must constitute substantial
18 benefit to the City over retail purchases of said telecommunications services under any applicable
19 government rates offered by the wireless services provider.

20 Section 7. All revenues from rent, fees and charges shall be deposited in the fund appropriate
21 to the Department.

22 Section 8. Any act consistent with the authority and prior to the effective date of this
23 ordinance is hereby ratified and confirmed.
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1 Section 9. This ordinance shall take effect and be in force thirty (30) days from and after its
2 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
3 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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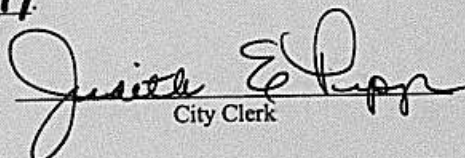
5 Passed by the City Council the 29th day of September, 1997, and signed by me in
6 open session in authentication of its passage this 29th day of September, 1997
7

8 
9 President of the City Council

10 Approved by me this 6th day of October, 1997.
11

12 
13 Mayor

14 Filed by me this 6 day of October, 1997.
15

16 
17 City Clerk

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19 (Seal)
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WIRELESS COMMUNICATIONS SITE AGREEMENT

CITY OF SEATTLE, _____ DEPARTMENT

NO. _____

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SPECIAL TERMS AND CONDITIONS

THIS AGREEMENT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (hereinafter referred to as the "City"), and the _____, a _____ (hereinafter referred to as "Company").

WHEREAS, the City, under the jurisdiction of the _____ Department, owns or controls land, buildings and other structures (individually and collectively the "Premises"); and

WHEREAS, the Company desires to obtain permission to use certain portions of the Premises described below for the installation and operation thereon of wireless communications Equipment;

NOW, THEREFORE, it is mutually agreed as follows .

I. PREMISES: Subject to the terms and conditions set forth herein, the City hereby grants to the Company the right to attach Equipment to a structure commonly known as _____ ("Facility"), and locate Equipment on the property at _____, Seattle Washington, which shall together be depicted upon the map attached hereto as Exhibit A, and described with appropriate Technical Data Sheets attached hereto as Exhibit B and with drawings showing specific details of attachment to the Facility attached hereto as Exhibit C; the said Equipment to be located upon that property legally described as follows:

(Legal Description)

(Such property and Facilities shall be referred to in this Agreement as the "Premises").

II. USE/PURPOSE: The Premises may be used only for the following use and purpose: wireless communication transmission and receiving equipment for _____ services.

III. SITE AGREEMENT CONTENTS: This Site Agreement (Agreement) consists of these Special Terms and Conditions as well as the General Terms and Conditions and all Exhibits and Addenda hereto attached. In the event of a conflict between the terms of the Special Terms and Conditions with the General Terms and Conditions, the Special Terms and Conditions shall prevail. This Agreement is intended to be the legally operative document between the City and the Company for the use of the Premises for the purpose stated herein and may not be modified except by written agreement of the parties. This Agreement supersedes all other understandings or agreements, written or oral, between the parties relating to the subject matter of this Agreement.

IV. TERM: The term of this Agreement begins _____ and terminates _____ unless it is terminated earlier pursuant to the provisions hereof. At its option, the Company may renew the Agreement for up to three (3) five (5) year periods provided all terms of this Agreement are met. The Company shall notify the City of its desire to renew the Agreement one (1) year prior to the expiration date of the Agreement. The Rental rate shall be subject to renegotiation for the option period as described below. The option must be exercised by written notice to the City one hundred and twenty (120) days before the expiration date of the Agreement.

In the event of the inability of the City to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this Agreement, neither the City nor any of its officers, employees or agents shall be liable for any damage caused thereby, nor shall this Agreement thereby become void or voidable nor shall the term herein specified be in any way extended, but in such event, the Company shall not be liable for any rent until such time as the City can deliver possession.

V. RENT/CONSIDERATION:

A. Initial Period. In consideration of this Agreement, the Company shall pay to the City as Base Rent the following annual sum: ____ dollar per year (\$ ____ .00) for the first year(s) of the Agreement. [OPTIONAL] The annual sum shall increase each year of the Agreement by adding an inflationary adjustment which shall be equal to the greater of 4% or the inflation increase as defined by the Consumers Price Index (CPI-U) for All Urban Consumers for the Seattle Everett Statistical Metropolitan Area, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor.

B. Option Periods. Negotiations shall commence regarding the rental rate within ____ days of the Company's notification to the City of its intent to exercise the option. The rental rate for the option period shall be established by increasing the rental rate by the rate of inflation, as measured by the most recent annual publication of the CPI-U for the Seattle-Everett Statistical Metropolitan Area, and for each year from the date the rental rate was last re-established. The intent of the parties is to achieve a market rate for the use of the City's facilities. The parties agree that the City may present a finding that the rental rate as calculated above does not fairly compensate the City at a fair market rate and set a rate based on the finding. If the Company disagrees with the rate, it may request and the parties hereto will mutually select and engage the services of an independent arbiter through the American Arbitration Association to resolve the rate dispute. The decision of the arbiter is binding as to the rate and, the costs of arbitration will be shared equally by both parties. The arbiter shall be limited to selecting a rate within the range defined by the inflation-based calculated rate and the rate established in the City's finding.

C. Form and Timing of Payment. Base Rent shall be paid in advance, on or before the ____ day of ____ of each _____. The City may agree to accept telecommunications services in lieu of cash payment; however such agreement must be individually negotiated and include substantial benefit to the City over retail purchase of said telecommunications services under any applicable government rates offered by the Company.

VI. LEASEHOLD EXCISE TAX: In addition to the Base Rent, the Company shall pay to the City the applicable Leasehold Excise Tax which, as of the commencement date, is ____ dollars (\$_), but is subject to change.

VII. PROJECT SCHEDULE FOR INSTALLATION(S):

VIII. CHANGES OR ADDENDA TO GENERAL TERMS AND CONDITIONS:

IX. BOND REQUIREMENTS :

X. OTHER TELECOMMUNICATION SERVICES WITH SENIOR PRIORITY RIGHTS OR APPROVED FOR COINCIDENT INSTALLATION(S):

XI. OTHER SPECIAL CONDITIONS:

A. SECURED FACILITIES. [OPTIONAL] The following Facilities subject to this Agreement are deemed to be Secured Facilities and shall be subject to the special limitations and conditions described in Section II.I Performance of Work of the General Terms and Conditions:

B. WORK BY FACILITY OWNER ONLY. [OPTIONAL] The following Facilities require that all work be carried out by the Facility owner (City) due to the specific nature of the Facilities as described in Section III.B. Approvals of the General Terms and Conditions:

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[Other Optional Conditions -- e.g. Conditions to meet the DCLU permit requirements, adoption of Appendix A to General Terms and Conditions for Preferred Service Rate, etc.]

XII. EFFECTUATION OF AGREEMENT: In order to be effective, this Agreement must be (1) signed by an authorized representative of the Company and returned to the Director/Superintendent at the address set forth below, accompanied by any required policy of insurance, and (2) signed by the Director/Superintendent pursuant to Ordinance authority.

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IN WITNESS WHEREOF, the parties hereto have affixed their signatures below:

CITY OF SEATTLE

By _____

Title _____

Department _____

Authorizing Ordinance _____

Company

By _____
(Signature)

(Print or Type Name)

(Print or Type Title)

NOTARIZATION OF SIGNATURE:

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

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

D: _____

(Notary Signature)

(Print Name)

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

City's address for all communications:

NOTARIZATION OF SIGNATURE:

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the individual who appeared before me, and said individual acknowledged that (s)he signed this instrument, on oath stated that (s)he was authorized to execute the instrument and acknowledged it as the _____ of the _____ 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 Washington, residing at _____.
My appointment expires _____.

Company's address for all communications:

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WIRELESS COMMUNICATIONS SITE AGREEMENT

NO. _____

GENERAL TERMS and CONDITIONS

I. DEFINITIONS

Whenever used in this Agreement with initial letters capitalized, the following terms shall have the following specified meanings, unless the context clearly requires a different meaning:

A. Company

A business licensed in the State of Washington, providing commercial mobile services, unlicensed wireless services, or common carrier wireless exchange access services, or other wireless telecommunications services for the purposes of connecting to the public switch telephone network or to the Internet authorized by the Federal Communications Commission.

B. Equipment

Antenna(s), cables, wires, and all communication attachments, appliances, and other structures owned and operated by the Company or for the benefit of the Company, including utility facilities that serve the Company's Equipment.

C. Facility or Facilities

A structure including but not limited to: buildings, and transmission, communication and water towers.

D. Facility Manager

The person designated by the Facility Owner to manage the Facility, including granting access, determining and approving its use and terms and conditions for such use.

E. Facility Owner

The City department which operates and/or manages a Facility or Facilities and holds the legal right to grant permission to occupy, use or modify Facilities or Premises.

F. Hazardous Substance

Any hazardous, toxic, or dangerous waste, substance or material, including petroleum products, or any contaminant, pollutant or chemical defined or identified in any environmental regulation as posing a potential risk to human health or the environment.

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G. Indirect Costs

Overhead associated with the services provided by the City on behalf of the Company, which includes but is not limited to supervision, administration, and accounting services.

H. Premises

The real property, described with a legal description in the Site Agreement, and/or any Facilities contained therein.

I. Secured Facility

A Facility designated in the Site Agreement, or subsequently designated by written notice from the City during the term of this Agreement, where access is limited as a matter of public safety or legal restriction, which requires that special access conditions be established and enforced.

J. Senior Priority Rights

Rights bestowed based on date authorized to attach Equipment to a Facility, such that parties without such senior priority shall have the burden to correct any interference caused by their installation to those with senior priority rights, provided the Equipment of the holder of the senior priority right is operating within the governing technical specifications.

K. Work

Collectively, the installation, construction, maintenance, repair, relocation and/or removal of Equipment and other work performed in connection with such Equipment on, in, to, or across from a Facility or Premises.

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II.

SPECIFIC AGREEMENTS

A. RELATIONSHIP TO SITE AGREEMENT

These General Terms and Conditions, with amendments as agreed to by the parties, are an attachment to and a part of Site Agreement No. _____.

The Special Terms and Conditions contain requirements and agreements particular to the use of the Premises and shall specify at minimum the following, including contact names and addresses where appropriate:

- Company and Project Manager
- Facility or Facilities to be Used; Facility Owner/Manager
- Site map and drawings specifying Equipment locations & installation details, including Technical Data Sheets
- Project Schedule for Installations
- Changes or Addenda to General Terms and Conditions
- Bond Requirements for Installation Instructions
- Identification of other telecommunication services with Senior Priority Rights or approved for coincident installation.

B. GENERAL PLANNING, ENGINEERING AND DESIGN CONSIDERATIONS

1. Co-location With Other Telecommunications Service Providers

The Company acknowledges that the use of City properties and Facilities is explicitly authorized under a policy to encourage co-location of equipment of multiple providers. The Company agrees to coordinate the installation of its Equipment with other telecommunications providers seeking installation. The Company shall not be granted Senior Priority Rights with respect to other telecommunication providers identified in the Site Agreement as previous or concurrent attachers. The Company shall be granted Senior Priority Rights with respect to other telecommunications providers who are approved for installation after the execution of the Site Agreement. The Company shall operate its wireless communications facilities and services in a manner that will not cause substantial interference to the Facility Owner or to any other third party with Senior Priority Rights to the Company.

2. Preparation of Detailed Engineering Design

The Company shall prepare engineering plans and specifications in consultation with and for the approval (pertaining only to the compatibility of the installation with the Facilities) of the Facility Owner(s) to complete design engineering for use of Facilities. The Facility Owner will make a good faith effort to review and approve, deny, or request revisions to the plans and specifications in a timely manner.

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3. Installation of Equipment

The Company shall be responsible to ensure compliance with all requirements of the Facility Owner(s) regarding installation of Equipment.

4. Complete Acceptance

The City shall accept installation of the Company Equipment by issuing a letter to the Company stating that the Work has been completed in accordance with approved specifications and that all punch-list items have been resolved to the satisfaction of the Company and Facility Owner. Such acceptance shall authorize initiation of services from the Premises.

5. Establish Maintenance Plan

The Company shall develop a maintenance plan agreement for the Equipment, documenting procedures necessary to meet the requirements of this Agreement, for review and approval by the City within 60 days of execution of the Agreement.

C. ACKNOWLEDGMENT AND ACCEPTANCE OF RISKS

1. Location on City Premises

In choosing to locate Equipment on City Premises, the Company acknowledges and accepts all risks, including but not limited to:

- Possibility of fires that may damage the Equipment
- Risks associated with having Equipment co-located with such Facilities and the Equipment of other telecommunications providers
- Ground movement
- Loss of line of sight path, including where caused by City action
- City change in the use of the Premises

The Company explicitly acknowledges that these risks include bearing all costs associated with such risks, except such costs caused by the gross negligence or willful misconduct of the City, including but not limited to provision of alternate communication paths, loss of Company business and restoration of its Equipment and/or systems if they are damaged.

The Company may terminate the Agreement pursuant to Section E.6. if any of the risks listed in this clause occur, cause material interference to the Company's operations on the Premises and the Company's operations cannot be restored to their prior condition within sixty (60) days of the occurrence. The Company will not be liable for any rent during the time the Facility is rendered unusable, except when caused by action of the Company or failure of the Company to perform its obligations under this Agreement.

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2. Damage Or Destruction.

In the event that the Premises and/or Facilities (a) are damaged by fire, earthquake, act of war, or other extraordinary casualty to such an extent as to render them unusable in whole or in substantial part; or (b) are destroyed, the City shall not be obligated to rebuild the Premises and/or Facilities or to compensate the Company for any loss of income under this Agreement. The City shall not be obligated to restore the functionality of the Premises and/or Facilities in the event of loss, damage, or destruction. The decision of the City to restore the Facility shall be based on City need for the Facility. The Company will not be liable for any loss, damage, or destruction of the Premises and/or Facilities, except loss, damage, or destruction caused by action of the Company, or failure of the Company to perform its obligations under this Agreement. The Company will not be liable for any rent during the time the Facility is rendered unusable, except when caused by action of the Company or failure of the Company to perform its obligations under this Agreement.

The Company may terminate the Agreement pursuant to Section E. 6. If the Company's operations are materially interfered with due to the occurrence of (a) or (b) and the Company's operations cannot be restored to their prior condition within sixty (60) days of the occurrence.

3. Acceptance of Premises and Facilities

The Premises and Facilities have been inspected by both parties and are accepted by Company in their existing condition as of the commencement date of this Agreement without reservation except for latent defects or faulty construction of the Premises and Facilities not discoverable by inspection at the time of taking possession.

D. PAYMENT TO FACILITY OWNERS

1. Facility Use Payment

Rental fees and the commencement date for the fees are stated in the Special Terms and Conditions of the Site Agreement.

2. Business Utility Tax

Company is subject to City of Seattle Business Utility Tax based on Gross Sales to Customers inside the City per City of Seattle Ordinance No. 117408 or as the same may be superseded or amended.

3. State Leasehold Excise Tax

Company is subject to the State Leasehold Excise Tax for the commercial use of tax exempt property per RCW Chapter 82.29A.

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4. Other Taxes

Company agrees to pay all current and future taxes which are applicable to Company's uses under this Agreement.

5. Reimbursement

Company shall reimburse Facility Owner within thirty (30) days after receipt of invoice for all amounts paid and costs incurred by Facility Owner at Company's expense:

a. For Performance of Work

The Company shall reimburse Facility Owner(s) for all costs incurred by the Facility Owner(s) in the performance of Work necessary for the installation and operation of the Equipment. In addition to reimbursement for direct costs of labor and materials incurred in the performance of Work necessary for the installation and operation of the Equipment, the Facility Owner(s) shall be eligible to be reimbursed by the Company for Indirect Costs that may be included in the billing rate. Examples of Work for which the Facility Owner will be reimbursed by the Company include the relocation of City equipment or work in a high-security or high-risk area, such as on electrical transmission towers.

b. For Relocation

The Company shall reimburse Facility Owner(s) for all direct and verifiable costs associated with any relocation of Facility Owner's Facilities to accommodate the Company's use of the Facility unless the costs of relocation of any equipment located within or on Facilities are borne by a third party. In addition to reimbursement for direct costs of labor and materials incurred for such relocation, Facility Owner(s) shall be reimbursed by the Company for Indirect Costs.

c. For On-Call Staff

The Company shall reimburse Facility Owner for all on-call staff required for access to Secured Facilities.

d. For Utilities and Other Services

Unless otherwise provided in the Special Terms and Conditions of this Agreement, the Company shall provide, or shall otherwise pay, before delinquency, its pro-rata share of costs for providing services on or to the Premises including, where applicable, but not limited to elevator service, electricity, gas, water, telephone, sewer, garbage, solid waste, heating, janitorial, security, tree trimming, and grounds maintenance, and shall also pay all charges for utilities provided exclusively for the Company's requirements and for utility installations and modifications thereto occasioned by the Company's requirements. The Company shall not be

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entitled to an offset, reduction or return of rental as the result of any interruption or failure of said services.

6. Payment

All amounts due to the Facility Owner under this Agreement shall be paid by the Company within thirty (30) days of the date of the invoice from the Facility Owner. The Facility Owner may elect to assess an interest fee of 0.033% for each day payment is late, and may consider the Company in default if any amount is not paid to the Facility Owner by the due date.

7. Sublease Rental Income

In the event the Company exercises its right to sublease under Section IV. B. Assignment, Successors and Assigns, the Company and the Facility Owner shall equally divide any income or benefits from the sublease of facilities constructed by the Company on the Premises to any other entity.

E. TERM & TERMINATION

1. Term -- Expiration of the Agreement

This Agreement shall expire in accordance with the term, including any option periods, established in the Special Terms and Conditions of this Agreement.

2. Termination -- Default

With notice as set forth below, and without recourse by the Company, the City may terminate this Agreement if any of the following occurs:

- a. The Company, after notification that its operations are interfering with the operations of the City at the Facility, fails to cure the operational interference within 30 days.
- b. The Company enters restricted areas of the Premises without proper notification to the City and/or without the required City observer present.
- c. The Company fails to pay rent or reimburse the City for expenses as required by the General Terms and Conditions.
- d. The Company fails to maintain the required insurance coverages.
- e. The Company fails to perform required Work within the time specified, or any authorized extension thereof.
- f. The Company fails to satisfactorily perform Work in conformance with the Agreement and/or to the satisfaction of the Facility Owner.

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In the event the City intends to terminate this Agreement for any of reasons (a) - (f) above, the City shall provide a written notice to cure, identifying the nature of the alleged basis for termination with reasonable specificity, and advising the Company of the City's intent to terminate the Agreement.

All further actions shall conform to the following procedures:

The Company shall, within three (3) business days after receipt of such notice if the breach is a failure to pay rent, entrance into restricted areas without authorization, or failure to maintain required insurance, otherwise, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

The City shall determine (a) whether a failure to comply with a material provision has occurred; (b) whether such failure is excusable; (c) whether such failure has been cured or will be cured by the Company; and (d) whether any proposed cure is reasonable. The Company shall make available to the City, if requested, any records, documents or other information the City reasonably deems necessary to make the determination.

If the City determines that a failure to comply with a material provision has occurred and that such failure is not excusable and has not been or will not be cured by the Company in a manner and in accordance with a schedule reasonably satisfactory to the City, the City may terminate the Agreement.

3. Termination -- City Use of Premises

The City may terminate the Agreement to accommodate the City's need to utilize the Premises in a manner inconsistent with the continued use of the Facility by the Company, or to relocate, replace or remove the existing Equipment, consistent with a capital project approved by the Seattle City Council. The City shall review proposals from the Company for a mutually acceptable location on the Premises or a nearby site under control of the City, to which the Company may relocate its Equipment at its own expense under the same terms and conditions of this Agreement. The City shall give written notice to the Company under this provision with a 180-day period to remove the Equipment from the Premises from the date that notice of the intent to terminate was given, unless due to a public safety emergency, wherein the Company shall comply within such shorter time as specified by the City.

4. Termination Due to Damage, Destruction or Material Interference

The Company may terminate the agreement upon the occurrence of the conditions detailed in Section II. C.1. Location on City Premises or Section II. C.2. Damage or Destruction, by giving sixty (60) days notice to the City as required under Section IV. J. Notices.

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5. Expiration or Termination -- Removal of Equipment.

Upon termination of the Agreement due to expiration or default, the Company shall promptly remove all Equipment from the Facilities and surrender the Premises. If the Company shall fail to promptly remove the Equipment upon expiration of the term of the Agreement, City may, after sixty (60) days' advance written notice to Company of its intent to do so, remove and dispose of the Equipment at Company's expense. Company shall receive credit for unused portions of the Facility rent, less any City cost to remove and dispose of Equipment, if the termination is effective before the end of the billing period.

6. Expiration or Termination -- Restoration of Sites

Where this Agreement is for the use of unimproved Premises, the Company shall restore, at its own expense, the Premises to its previous state, except for normal wear and tear, when directed to do so by the City, including the removal of any structures and Equipment and the restoration of comparable landscape features. At its option, the Company may offer to sell part or all of its structures or Equipment to the City. At its sole discretion, the City may choose to accept or reject the offer.

F. MODIFICATIONS TO FACILITIES

At the Company's request, the Facility Owner may make modifications to Facilities to facilitate building access for the installation of Equipment. Any requests by the Company for such modifications shall be made to the Facility Manager. All costs for such modifications shall be paid by the Company.

All modifications to Facilities shall be subject to the review and approval by the Facility Owner during design and construction. If the Company is responsible for the construction of the installation subject to this Agreement, any unauthorized modifications must be corrected at the expense of the Company. The Company may be required to remove such modification and restore the Facility to its previous condition or as approved by Facility Owner. In the event the City performs the restoration work, the Company shall reimburse the City for the actual costs associated with the restoration.

G. REQUIREMENTS FOR CONSTRUCTION AND INSTALLATION

1. Construction and installations are to be made only as approved by City. Attachments and Equipment shall conform to Technical Data Sheets attached to the Site Agreement.
2. Construction and installation of Equipment shall be in accordance with requirements of the State of Washington Electrical Construction Code, State of Washington Administrative Code (Chapter 296-44), Seattle Electrical Code, Seattle Building Code and all other applicable codes as now in force and as revised or changed in the future.
3. Installation of Equipment made by Company to City Facilities under this Agreement shall not disturb or conflict with the equipment of the City. Moving, rearranging, or adjustment of City Facilities to provide space to accommodate the

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Equipment shall be done at the expense of Company, and, at the City's option, by the City.

4. In the event radio interference occurs, all users of the site are required to participate in solving the problem by providing technical personnel and equipment to locate the source of the specific problem.
5. The City hereby reserves a right of access to inspect the areas occupied by the Company.

H. MODIFICATIONS OF EQUIPMENT

Equipment shall not be materially changed or added to without submitting new Technical Data Sheets and without the written approval of the City. Replacement of like parts during maintenance and repair is acceptable without specific approval, provided that the replacement does not change the visual appearance, increase consumption, or increase or change the pattern, frequency, and/or power of the radio frequency emissions from the Equipment.

All provisions in this Section are subject to any and all conditions as required under the Special Terms and Conditions of this Agreement, including but not limited to Section IX., Other Special Conditions.

I. PERFORMANCE OF WORK

1. Company shall perform the Work in a workmanlike and skillful manner and comply in full with applicable Codes. Company shall ensure that the Work and the Equipment are in all respects (a) safe, (b) free from all faults and defects in workmanship, material, and design, and (c) in conformance with the requirements of this Agreement.
2. Company shall promptly and satisfactorily correct or replace any work or Equipment found to be defective or not in conformity with the requirements of this Agreement. If Company fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, City may perform such Work and make such corrections and replacements at Company's expense.
3. Company shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, Company shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials. If Company fails to do so, City may perform such work at Company's expense.

J. ACCESS AND MAINTENANCE

1. Maintenance

Company shall maintain all Equipment in good and safe condition and state of repair.

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2. Permission to Enter

Access to Facilities shall be allowed only after the Facility Owner has been notified per item 3., below, and permission has been granted by the Facility Owner.

3. Requests for Access

All requests for access to Facilities must be made through the appropriate City Facility Manager or designee in writing (facsimile acceptable), and shall be subject to the restrictions and conditions in this Agreement.

The Company shall notify the Facility Manager at least three (3) working days before access to any City Facility is desired. The affected City Department will respond to requests for access from the Company at least twenty-four (24) hours prior to the requested start time and no later than 48 hours from the receipt of the request, indicating whether access has been granted as requested, access has been delayed or access has been denied.

In the event of an emergency, requests for access may be made in person or by telephone. The City shall provide a mechanism to request emergency access on a 24-hour, 7 day a week basis. In such cases, the Company will follow up with prompt written documentation of the request.

The City shall make every effort to provide access to Facilities during the times requested by the Company. However, the City may not be able to accommodate all requests, and will not be liable for any damages or loss the Company may sustain due to the Company's inability to access the Facilities. The Company is responsible to plan accordingly.

All access to City Facilities by the Company or its contractors must be coordinated with the appropriate authority staff designated by the City's Facility Manager(s). The Company and its contractors must comply with whatever conditions for access to City Facilities that are specified by designated Facility Managers.

4. Secured Facilities

Where Equipment is located on or in Facilities identified as Secured Facilities in the Site Agreement, Company shall be accompanied by City staff, at Company expense, pursuant to the reimbursement provisions of Section II.D.5. City shall maintain a call-out system to facilitate Company access on a continuous basis for emergency maintenance and repairs.

5. Project Control

City staff shall be authorized to stop Work that is being conducted by the Company and its contractors if, after discussions with the Company if reasonably feasible, City staff determine that the Work in question would or could potentially cause hazards to workers or interference with the City Facilities, or facilities of other users on-site.

6. Priority Restoration

Restoration of City services shall be given the highest priority in the event that any of these services and the Company's telecommunication services are interrupted at the same time, unless otherwise agreed to by the City and the Company at the time of restoration.

7. Hazardous Substances

The Company understands and agrees that flammable or Hazardous Substances, including but not limited to explosives, petroleum products, paint, solvents, and resins, are not allowed on the Premises without the express written permission of the City. In the event written permission to store the preceding substances is granted by the City, the Company agrees to dispose such substances in a legal manner.

Prior approval may be obtained for Hazardous Substances used during construction through the construction approval process. Prior approval may also be obtained for the use of petroleum products for emergency generation of electrical power during periods of outage. Prior to initiating any other process requiring the use or storage of, or generating, on or adjacent to the Premises, Hazardous Substances, the Company covenants and agrees to obtain the City's prior approval. The City may consider approving the specific use, but only after the Company demonstrates to the satisfaction of the City that Company has all necessary permits for operation and a Hazardous Substances emergency response plan.

Company agrees to cooperate in any environmental audits conducted by the City's staff or independent third parties specifically related to the Company's use or storage of Hazardous Substances. Company agrees to reimburse the City for the cost of such audits. Company agrees to provide the City with notice of every governmental inspection of the Premises, notice of violation, and order to clean up contamination, within five (5) days after receipt thereof by the Company. Company agrees to permit the City to participate in all settlement or abatement discussions. In the event Company fails to take remedial measures, as stated in any final administrative or judicial order or decrees signed by a state, federal, or local regulatory agency within 90 days of such order or decree, the City may elect to perform such work, and Company covenants and agrees to reimburse the City for all direct costs and Indirect Costs associated with the City's work.

Company hereby agrees to release, defend and indemnify the City and hold the City harmless for any suits, claims, damages, strict liabilities, and costs or liabilities associated with the removal or remediation of any Hazardous Substance (including petroleum and gasoline products) that are released onto or from the Premises, or otherwise come to be located on the Premises during the term of the Agreement due to the actions of the Company, including but not limited to those that may have migrated to or from the Premises. "Cost" shall include, but not be limited to, all response or remediation costs, disposal fees, investigation costs, monitoring costs, civil or criminal penalties, attorney fees, and other litigation costs incurred in connection with such removal or remediation.

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K. RIGHTS OF PROPERTY and EASEMENTS

Nothing in the Site Agreement, including the Special and General Terms and Conditions, Exhibits and/or Addenda shall be construed to convey to the Company any property rights in Facilities or Premises. Nothing in the Site Agreement, including the Special and General Terms and Conditions, Exhibits and/or Addenda shall be construed to compel a Facility Owner to maintain any of its Facilities for a period longer than is necessary for its own service requirements. This Agreement shall not be construed as requiring the City to obtain any easement for the benefit of the Company. The Company may request and obtain, at the discretion of the City, easements for access and utilities to, from, and across the Premises. All Equipment purchased and installed by the Company shall remain the property of the Company, unless otherwise agreed to by the Parties in an amendment hereto.

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III.

COMPANY AND CONTRACTORS REQUIREMENTS

A. CONTRACTS

The Company is responsible for ensuring that the applicable terms and conditions of the Site Agreement, Exhibits and Addenda are included in agreements with contractors. The Company shall be held liable for any negligence caused by its contractors' performance or failure to perform the work under the Site Agreement or any contracts with the Company.

B. APPROVALS

1. All contractors hired by the Company to work within or on the Premises shall be subject to approval by Facility Owner(s) which approval shall not be unreasonably withheld or delayed. In all agreements with contractors, the Company may require such contractors to attend a pre-construction meeting with the appropriate authority to review installation requirements and Work restrictions prior to any Work being performed in or on the Premises. The contractor's agreement shall state that the Facility Owner has authority to stop Work as specified in Section II.J and may require that inadequate Work be corrected after discussion with Company representatives.
2. Where identified in the Site Agreement, certain Facilities require, due to the nature of the facility, that all Work be completed by the Facility Owner at Company expense pursuant to the reimbursement provisions of Section II.D.5.

C. RELEASE, INDEMNITY AND HOLD HARMLESS

1. Company releases and shall defend, indemnify and hold harmless City, its successors and assigns, and the respective directors, officers, employees and agents of City and its successors and assigns (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with the Equipment or installation of any Equipment to any structure, the performance of any Work, the operation of any Equipment, or the Company's system, or the acts or omissions of Company or any of its suppliers or contractors of any tier, the respective successors and assigns of Company, or anyone acting on Company's behalf in connection with said installation of Equipment, performance of Work, or operation of Equipment or Company's system.
2. Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of persons, including officers, agents, and employees of either party hereto including payment made under or in connection with any Worker's Compensation Law including Title 51 RCW or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to by the erection, maintenance, presence, use or removal of Company's Equipment or installations of Equipment including any claims or demands of customers of the Company with respect thereto. The Company specifically agrees to defend, indemnify and hold harmless the Indemnitees for claims by the Company's employees or employees of contractors

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and subcontractors employed by Company to perform work under this Agreement. For this purpose, the Company agrees to waive its immunity under Title 51 RCW, and acknowledges that this waiver has been mutually negotiated by the parties.

3. The Indemnitees shall not be liable to the Company or to the Company's customers, and the Company hereby indemnifies, protects and saves harmless City against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by the Company's customers, or for any interruption to the service of the Company, or for interference with the operation of the Equipment.
4. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless provisions shall apply to and for the benefit of the Indemnitees. If it is determined that RCW 4.24.115 applies to this Agreement, the Company agrees to defend, indemnify and hold harmless the Indemnitees to the maximum extent permitted thereunder, and specifically for the Company's negligence concurrent with that of the Indemnitees to the full extent of the Company's negligence.
5. City is willing to permit installations of the Equipment to the Facilities for the fees described in II.D. only in consideration of and in reliance upon such release, indemnity and hold harmless.

D. WORKER'S COMPENSATION, INSURANCE AND BOND

1. Company shall ensure that, with respect to all persons performing the Work, Company or its suppliers or contractors maintain in effect at all times during the term of this Agreement coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. Company shall furnish to the City such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as the City may request.
2. Company shall obtain, and maintain continuously for the term of this Agreement, at its own expense, occurrence form Commercial General Liability insurance with endorsements and/or other insurance to indemnify for the activities and services of this Agreement. Minimum limit of coverage shall be \$1,000,000 each occurrence and \$2,000,000 in the aggregate. Company shall also obtain, and maintain continuously for the term of this Agreement, at its own expense, business automobile liability coverage for owned, non-owned and hired vehicles. Minimum limit coverage for bodily injury and property damage shall be \$1,000,000 per person and \$1,000,000 per occurrence. The insurance carrier issuing the policy must have an A.M. Best rating of at least A:-VII and be legally admitted and licensed to do business in the State of Washington.
3. Such insurance shall be endorsed to include the City of Seattle, its directors, officers, employees, agents and joint users as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City.

4. Such insurance shall include a "cross liability", "severability of interests", or "separation of insureds" clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom the claim is made or suit is brought".
5. Prior to commencement of performance of any of the Work, Company shall provide the City a duplicate (photocopy or facsimile acceptable) of the required insurance policy(ies) with its endorsements as evidence of coverage. The company or companies issuing such insurance and the policies issued shall be subject to approval by the City.
6. Company shall promptly advise the City of all claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of Company's Equipment. Copies of all accident or other reports made to any insurer by Company shall be furnished to the City.
7. Company shall also furnish the City with such additional assurance and evidence of such insurance (such as copies of all insurance policies) as the City may from time to time request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, Company shall deliver to the City a duplicate of the replacement policy with its endorsements naming the City as an additional insured..
8. Company shall ensure that any policies of insurance that Company or any of its suppliers or contractors of any tier carry as insurance against property damage or against liability for personal injury (including death) shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies, the City hereby waives all rights of subrogation against Company, its successors and assigns, and the respective directors, officers, employees and agents of Company and its successors and assigns.
9. The requirements of this Agreement as to insurance and acceptability to the City of insurers and insurance to be maintained by Company are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by Company under this Agreement.
10. In addition, Company shall furnish to the City, at such times and in such forms as the City may in writing request, surety bonds with performance, payment and maintenance clauses payable to the City.

E. PERMITS

Company shall obtain and comply (and shall ensure that the Equipment, the Work, and all of Company's suppliers and contractors of any tier comply) with all applicable permits including authorizations as required under the City's Land Use Code (SMC Chapter 23), if applicable, licenses, franchises, rights-of-way, easements, and other

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rights required to perform the Work and operate the Equipment and the Company's system in accordance with this Agreement. Company shall furnish to City such evidence thereof (such as certified copies of permits, licenses, franchises, rights-of-way, and easements) as City may request.

F. COMPLIANCE WITH LAWS AND REQUIREMENTS

In the performance of the Work under this Agreement, and the continued use of the Company's Equipment on City Premises, the Company shall comply (and shall ensure that the Equipment, the Work, and all of Company's suppliers and contractors of any tier comply) with all applicable:

1. laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect, of any governmental authority;
2. industry standards and codes; and
3. City construction guidelines, specifications, rules, and regulations which apply to Company's Work and will be provided by City to Company on request.
4. Federal requirements regarding radio-frequency emissions and interference with other electronic or telecommunications equipment and the City's Radio-Frequency Radiation regulations (SMC 25.10) as administered by the Health Department.
5. Senior priority rights held by other telecommunications entities to be protected from interference.

Company shall furnish such documents as may be required to effect or evidence compliance. All laws, regulations, and orders required to be incorporated in agreements of this character are incorporated herein by this reference.

G. NONDISCRIMINATION AND AFFIRMATIVE ACTION

During the performance of Work, the Company, for itself, its assignees and successors in interest, agrees as follows:

1. The Company will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. The Company will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates or pay or other forms of compensation, and selection for training, including apprenticeship.
2. Failure to comply with any of the terms of these provisions shall be a material breach of this contract.

3. The Company will insert in all contracts for Work covered by these Agreements, a copy of Seattle Municipal Code Section 20.44.040 and will require compliance with same by its contractors.

H. WOMEN'S AND MINORITY BUSINESS UTILIZATION

The Company will make reasonable efforts to utilize women's business enterprises and minority business enterprises in any contracting. The Company will require that its contractors and subcontractors will make reasonable efforts to utilize women's business enterprises and minority business enterprises. The Company will maintain records reasonably necessary for monitoring its compliance with the provisions of this section.

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IV.

ADDITIONAL CONDITIONS AND PROVISIONS

A. NON WAIVER

The failure of either party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

B. ASSIGNMENT; SUCCESSORS AND ASSIGNS

Company may assign, transfer, sub-lease or otherwise dispose of any of the privileges granted under this Agreement to a business entity which meets the following criteria: (i) licensed by the Federal Communications Commission to operate a wireless communications business; and (ii) (1) is a parent, subsidiary, affiliate or successor of the Company; or (2) controls or is controlled by or under common control with the Company; or (3) is merged or consolidated with the Company; or (4) purchases a majority or controlling interest in the ownership or assets of the Company; (5) purchases substantially all of the assets of the Company; or (6) purchases substantially all of the assets of the Company in the Metropolitan Trading Area in which the Premises are located. Upon notification to the City by the Company of such action, together with a statement by the receiver of the privileges that it will comply with the conditions of the Site Agreement, the Company shall be relieved of all future performance, liabilities and obligations under the Agreement. The Company may not otherwise assign transfer, sub-lease or otherwise dispose of any of the privileges granted under this Agreement without the written consent of City.

C. SURVIVAL

The obligations imposed on Company and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

D. ENTIRE AGREEMENT

The entire Site Agreement between the City and the Company shall consist of the Special Terms and Conditions, and the General Terms and Conditions contained herein, and all Exhibits and/or Addenda issued concurrent with or subsequent to the execution of this Agreement, and any amendments to same.

E. APPLICABLE LAW

This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington.

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F. SEVERABILITY

In the event any section, sentence, clause, or phrase of the Agreement is adjudicated to be invalid or illegal by a court of last resort and of competent jurisdiction, the remainder of the Agreement shall be unaffected by such adjudication and all other provisions shall remain in full force and effect as though the section, clause, or phrase so adjudicated to be invalid had not been included herein. The Parties hereto agree to then negotiate in good faith the replacement section, sentence, clause, or phrase which is legal and most closely represents the original intent of the Parties.

G. RIGHTS CUMULATIVE

The rights and remedies of the Company and the City provided for under this Agreement are in addition to any other rights and remedies provided by law. The failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not exclude or waive the right to use another.

H. CONTRACTUAL RELATIONSHIP

This Agreement does not constitute the Company as the agent or legal representative of a Facility Owner for any purpose whatsoever. The Company is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the Facility Owner or to bind the Facility Owner in any manner or thing whatsoever. In no event shall the City be construed or held to have become in any way or for any purpose a partner, associate, or joint venture of the Company or any party associated with the Company in the conduct of the Company's business or otherwise.

I. HEADINGS

The titles of sections are for convenience only and do not define or limit the contents.

J. NOTICES

All notices and other materials to be delivered hereunder, shall be in writing and shall be delivered or mailed to addresses as identified in the Special Terms and Conditions of this Agreement.

K. NON-EXCLUSIVITY

This is a non-exclusive arrangement.

L. MODIFICATION OR AMENDMENT

No modification to or amendment of the provisions of this Agreement shall be effective unless in writing and signed by authorized representatives of the City and the Company. The City and the Company expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

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M. ATTORNEY FEES AND COSTS

In the event legal action is taken or commenced between the parties hereto, declaratory or otherwise, for the enforcement of any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney fees as determined by the trial and appellate courts.

Costs and reasonable attorney fees shall include, but not be limited to, reasonable attorney fees, paralegal and legal support staff expenses, costs of arbitration, mediation, expert witnesses, exhibits, reasonable investigations, and reimbursement for all time, expense, and overhead of all prevailing party personnel or consultants assisting in the legal action or responding to or investigating a claim or demand.

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APPENDIX A

PREFERRED SERVICE RATE

To the extent the Company provides a preferred service rate to other government users of its network, Company agrees to offer the City of Seattle the lowest rate then charged by Company for similar services, provided to like entities within the United States. Nothing contained herein shall require Company to provide particular services not otherwise provided to its customers or to install additional facilities or expand, modify or upgrade its existing network solely to accommodate any request made by the City.

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City of Seattle

Norman B. Rice, Mayor
Executive Services Department
Dwight D. Dively, Director

July 31, 1997

Honorable Jan Drago
President, Seattle City Council
600 Fourth Avenue, 11th floor
Seattle, Washington 98104

Via: Mayor's Office

Attention: Judy Bunnell, Acting OMP Director

Subject: An Ordinance Authorizing Agreements for Use of City Property and/or Facilities
for Wireless Communication Transmission Purposes

Dear Councilmember Drago,

We are pleased to forward for Council adoption an Ordinance providing to City Departments with property management responsibility the authority to negotiate and execute agreements for installation of commercial wireless communications equipment on City-owned property.

Resolution 29344, passed in April, 1996, encourages the use of City property in siting wireless communications equipment, because of its interest in the quality of these services, and the need to encourage appropriate siting and co-location of equipment to reduce unnecessary proliferation of towers and antennas. A standard Wireless Communication Site Agreement form (Attachment A) to be used in these transactions was developed by an interdepartmental Wireless Committee made up of representatives from City Light, Seattle Public Utilities, Parks and Recreation, Office of Management and Planning and Executive Services. The Law Department reviewed the agreement and the Seattle Center also provided input.

The agreements will allow providers of wireless mobile and personal communications services the use of City buildings, towers, raw land or other facilities on a long-term rental basis, after completing an application (and any required permit process) to ensure minimal negative impacts on the neighborhoods or departmental operations at the site. Using standard forms will clarify

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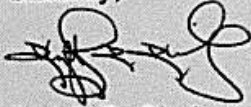
and streamline the process for the communication services providers, as well as save significant departmental staff time. Recognizing the potential economic return, the committee also used the agreement forms to establish a rate setting process, which seeks fair market value for use of the City's property.

With the adoption of this Ordinance, the departments will have some flexibility in negotiating the specific terms of the Site Agreement Special Terms and Conditions, which will be prepared for each transaction, establishing the term, the rental rate, and any special conditions. The second part of the agreement form, the General Terms and Conditions, is intended to be used uniformly. It defines terminology and sets forth the City's requirements including engineering and design considerations, modifications to facilities, access and maintenance, insurance and indemnification, and other contract language.

During the rest of this year, committee members anticipate completion of several agreements for installations at fire stations, water towers, power structures and other facilities. For additional information about this legislation, please contact Barbara Brannan, ESD Facilities Services, 684-0414.

Thank you for your time and consideration.

Sincerely,



Dwight D. Dively
Executive Services Director

Attachments

cc: Monica Power, OMP

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SOP 100-014 -- Additional Information on Legislative Requests

1) Statement of Program/Proposal Objectives:

Authorizing agreements for the use of City real and personal property for siting facilities and other equipment for wireless communication transmission facilities by commercial communication services providers and stating that the limitations of Seattle Municipal Code Section 2.18.160 are not applicable to such agreements.

2) Dollar Amount Requested/Fund Source:

None

3) Length of Program Commitment:

Establishes new procedure for the foreseeable future.

4) List of New Positions:

None

5) Facilities or Equipment:

None

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City of Seattle

Norman B. Rice, Mayor

Executive Department - Office of Management and Planning

Judy Bunnell, Director

August 29, 1997

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT:

Executive Services Department

SUBJECT:

AN ORDINANCE authorizing agreements for the use of City real and personal property for siting facilities and other equipment for wireless communication transmission facilities by commercial communication services providers and stating that the limitations of Seattle Municipal Code Section 3.18.160 are not applicable to such agreements.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Monica Power at 684-8076.

Sincerely,

Norman B. Rice
Mayor

by

JUDY BUNNELL
Director

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Enclosure

Seattle Municipal Building, 600 Fourth Avenue, Seattle, WA 98104-1826

Tel: (206) 684-8080, TDD (206) 684-8118, FAX: (206) 233-0085

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97-236 *PLM*

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SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

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FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO:

C. S. 20.28

PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

85624
City of Seattle, City Clerk

-ss.

No. ORDINANCE TI

Affidavit of Publication

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 23, 1997, and published here by title only, will be mailed, at no cost, upon request for two months after this publication. For further information, contact the Seattle City Clerk at 854-8344.

ORDINANCE NO. 118733

AN ORDINANCE related to the Downtown Concert Hall (commonly known as "Benaroya Hall"), authorizing the execution of a Lease and Concession Agreement with B H Music Center for Benaroya Hall, the adjacent Garden of Remembrance and related facilities.

ORDINANCE NO. 118733

Relating to the Seattle Center Department; authorizing execution of an agreement with Seattle Thunderbirds Hockey Club, Inc. regarding Seattle Center Facility Use.

ORDINANCE NO. 118736

AN ORDINANCE relating to the Executive Services Department, Technology Division; increasing the expenditure allowance in that department's 1997 budget for the Single-E-Mail Project; reducing and reappropriating to the Executive Services Department an appropriation from the Reserve for Technology in the 1997 Finance General budget to pay a General Fund portion of the project costs; and providing payment therefor; all by three-fourths vote of the City Council.

ORDINANCE NO. 118737

AN ORDINANCE authorizing agreements for the use of City real and personal property for siting facilities and other equipment for wireless communication transmission facilities by providers and stating that the limitations of Seattle Municipal Code Section 21A.160 are not applicable to such agreements.

ORDINANCE NO. 118738

AN ORDINANCE authorizing the execution of a Memorandum of Understanding with the International Association of Machinists and Aerospace Workers, AFL-CIO District Lodge No. 160, Local Lodge No. 78.

Publication ordered by JUDITH FIP, PIN, City Clerk.

Date of official publication in the Daily Journal of Commerce, Seattle, October 9, 1997. (159036634)

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT: 118732, 33, 36-38

was published on

10/09/97

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

10/09/97

Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication