

## HIGHLINE WATER DISTRICT KING COUNTY, WASHINGTON

### RESOLUTION 23-3-15B

#### RESOLUTION AUTHORIZING COMMUNICATIONS SITE USE AND LICENSE AGREEMENT WITH T-MOBILE WEST LLC, AT THE DISTRICT'S NORTH HILL SITE – 505 208TH ST S, DES MOINES, WA

**WHEREAS**, the District owns certain real property located at 505 208TH St S, Des Moines, King County, Washington 98198 legally described in Attachment-1, Exhibit A attached (the "Property"), on which it operates reservoir and other related structures known as the North Hill Site; and

**WHEREAS**, the District, as Lessor, and Licensee, through its predecessor-in-interest Western PCS BTA 1 Corp., as Lessee, entered into that certain Lease Agreement effective May 28, 1998 (the "Prior Lease"), pursuant to which Licensee installed certain antennae and other fixtures and equipment (therein "Lessee Facilities") on that portion of the Reservoir sides and/or top, and on a portion of the "footprint" or reasonable perimeter thereof (therein the "Leased Premises"), as such, antennae, fixtures and equipment; and

**WHEREAS**, the initial term of the Prior Lease was five (5) years, commencing on May 28, 1998 and terminating on May 27, 2003. The term of the Prior Lease was to automatically renew for four (4) additional terms of five (5) years each. Unless terminated by either Party, the term of the Prior Lease will expire on May 27, 2023.

**WHEREAS**, Licensee desires to continue operation of the current Lessee Facilities on the Property and to locate and operate certain additional equipment, improvements, and facilities on a portion of the Property in addition to the initial Leased Premises; and

**WHEREAS**, District is willing to permit the continued operation of the current Lessee Facilities on the Property and permit the installation of such additional equipment, improvements, and facilities on a portion the Property as desired by Licensee, subject to the provisions of this Agreement; and

**WHEREAS**, RCW 57.08.120 contains the requirements the District must follow to lease real property which owns or has an interest in, property the District has a future need, and which is not immediately necessary for its purposes. A Public Hearing was held March 1, 2023, during a regularly scheduled, Highline Board Meeting. Public notices were published in the Kent Reporter on 2/10/23 and 2/17/23; and

**WHEREAS**, commencing retroactively on May 28, 2022, the amount of Base Rent shall be Thirty-Two Thousand One Hundred and Thirty-Six Dollars and Seventy-Five Cents (\$32,136.75) per year. Commencing May 28, 2023, and on May 28 of each year during the Term thereafter (the "Adjustment Date") Base Rent shall be increased to an amount equal to One Hundred Three and One-Half Percent (103.5%) of the annual Base Rent immediately payable prior to said Adjustment Date.

# HIGHLINE WATER DISTRICT KING COUNTY, WASHINGTON

## RESOLUTION 23-3-15B

### NOW THEREFORE, BE IT RESOLVED:

1. The Board of Commissioners authorizes the General Manager or designee to enter into a Communications Site Use and License Agreement with New Cingular Wireless PCS, LLC, as outlined in Attachment-1 (incorporated herein by this reference).
2. The General Manager and/or the District's Legal Counsel are authorized to make minor changes to the agreement if required.

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at an open public meeting held this **15th** day **March 2023**.

### BOARD OF COMMISSIONERS

DocuSigned by:

*Daniel Johnson*

**Daniel Johnson**, President

*Polly Daigle*

**Polly Daigle**, Commissioner

*Vince Koester*

**Vince Koester**, Commissioner

DocuSigned by:

*Kathleen Quong-Vermeire*

**Kathleen Quong-Vermeire**, Secretary

*Todd Fultz*

**Todd Fultz**, Commissioner

**COMMUNICATIONS SITE USE AND  
LICENSE AGREEMENT**

THIS COMMUNICATIONS SITE USE AND LICENSE AGREEMENT (“Agreement”) effective this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), is by and between HIGHLINE WATER DISTRICT, a Washington municipal corporation, having its principal place of business at 23828 – 30<sup>th</sup> Ave. S., Kent, Washington 98032 (“District”) and T-MOBILE WEST LLC, a Delaware limited liability company, having its principal place of business at 12920 SE 38<sup>th</sup> Street, Bellevue, Washington 98006 (“Licensee” or “Lessee”) (individually a “Party” and collectively the “Parties”).

**RECITALS:**

A. The District owns certain real property located at 505 208<sup>th</sup> St S, Des Moines, WA, 98198 legally described in **Exhibit A** attached hereto (the “Property”), on which it operates a water reservoir and other structures known as North Hill Site (the “Reservoir”).

B. The District, as Lessor, and Licensee, through its predecessor-in-interest Western PCS BTA 1 Corp., as Lessee, entered into that certain Lease Agreement effective May 28, 1998 (the “Prior Lease”), pursuant to which Licensee installed certain antennae and other fixtures and equipment (therein “Lessee Facilities”) on that portion of the Reservoir sides and/or top, and on a portion of the “footprint” or reasonable perimeter thereof (therein the “Leased Premises”), as such, antennae, fixtures and equipment are depicted on **Exhibit B** attached hereto (“Licensee’s Existing Equipment”).

C. The initial term of the Prior Lease was five (5) years, commencing on May 28, 1998 and terminating on May 27, 2003. The term of the Prior Lease was to automatically renew for four (4) additional terms of five (5) years each, unless at least six months prior to the commencement of the succeeding renewal term, either Lessor or Lessee thereunder provided the other with written notice of its intention not to renew the Prior Lease. Unless terminated by either Party, the term of the Prior Lease will expire on May 27, 2023.

D. Licensee desires to increase the area of the Reservoir’s top and/or sides on which it may place its Equipment, to place additional Equipment on the Property, and to continue operation of the current Lessee Facilities on the Property after the expiration date of the Prior Lease.

E. District is willing to consent to an increase in the area of the Reservoir’s top and/or sides on which Licensee may place Equipment and the placement of additional Equipment on the Property, and to permit the continued operation of Lessee Facilities on the Property, provided that the Prior Lease be replaced and superseded in its entirety by this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. Use Agreement and License.

a. Premises. District hereby authorizes Licensee to use, for the duration of this Agreement, that approximately two hundred forty (240) square foot area of the Property, as

depicted on Exhibit C attached hereto (the "Premises"), for the location and use of Licensee's Existing Equipment and additional ground based communication equipment and cabling to Licensee's Equipment on the License Area, as defined below.

b. License for Reservoir. District hereby grants to Licensee for the duration of this Agreement, a non-exclusive license to install, maintain, operate and repair on the top surface of the Reservoir, as depicted on **Exhibit D** attached hereto (the "License Area") certain arrays, antennae, fixtures and equipment, as depicted, configured and inventoried on **Exhibit E** attached hereto (Licensee's Existing Equipment located on the License Area pursuant to the Prior Lease and such additional arrays, antennae, fixtures and equipment shown on Exhibit E hereto, being collectively referred to herein as Licensee's "Equipment").

c. License for Access. District hereby grants to Licensee for the duration of this Agreement, a non-exclusive license for access from 5<sup>th</sup> Avenue S. to and from the Premises and access to the License Area. The access rights granted to Licensee herein are for the purpose of installing, constructing, maintaining, restoring, replacing, and operating Licensee's Equipment on the License Area and Licensee's cabling and ground based communications equipment within the Premises. Subject to the right of District to restrict access to the License Area for such temporary periods as may reasonably be required for maintenance, repair or painting of the Reservoir, such rights shall include the right of ingress and egress, twenty-four (24) hours per day, seven (7) days per week, for access to and from the Premises and the License Area. Except in cases of emergency, District shall give Licensee reasonable prior notice before restricting such access and shall use reasonable efforts to coordinate the same with Licensee's Contact Person, as set forth in Section 26, so as to minimize interference with Licensee's operations on the Property. When accessing the Property and License Area, Licensee and its agents, employees and contractors shall only drive on the gravel, sand, or dirt roadways and will walk only on the designated paths. Licensee shall, within thirty (30) days of District's invoice therefor, pay to District all costs and expenses incurred by District in repairing any damage caused by any non-compliance with the preceding sentence. Except in cases of emergency, Licensee must give District at least four (4) hours' prior notice before accessing the Leased Premises. Licensee has been assigned a key and has furnished its own lockbox for access. Licensee shall comply with all security regulations, policies and procedures currently or hereafter established by District, including the obligation of keeping fence gates closed and locked.

d. Use of the Premises and License Area. Licensee shall use the Premises and the License Area as a "Communications Site", as defined below, for Licensee's system for providing wireless telecommunications services to the public, personal communication services, short messaging, wireless data, and, subject to District's prior written approval and the terms of this Agreement, any other service which Licensee is legally authorized during the term of this Agreement to provide to the public.

For purposes hereof, a "Communications Site" is a site at which telephone, radio, and other communications equipment is installed and used to send and receive signals to and from wireless telephones and other mobile devices and to connect those signals to telephone or other communications facilities either directly, by means of cables, or indirectly, by means of transmitting and receiving facilities (including microwave and/or other antennas) located at the Communications Site. Licensee shall not use the Premises or the License Area for any

other purposes without the prior written consent of District. Licensee shall at all times maintain the Premises and the License Area in a safe and sanitary condition.

e. Coordination with Other Users or Licenses. Licensee acknowledges that District has or may enter into additional communications site use agreements for the Property. Licensee agrees to coordinate and cooperate with such other users in the design, installation, operation, and maintenance of such other users' equipment on the Property; provided, however that such coordination and cooperation shall be at the expense of the user who use has commenced or will commence later in time.

f. Improvements. Following the Commencement Date, as defined in Section 3, below, Licensee, at its sole expense, shall have the right to maintain, and operate the Premises and the License Area as a Communications Site and to improve that site with the installation of Licensee's additional Equipment, along with related appurtenances, as shown, configured and inventoried on **Exhibits D and E**, according to plans approved by District. Licensee shall submit plans and specifications for the initial installation of Licensee's additional Equipment for District's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that all conduits, cabling and other connection to the Premises or License Area, other than Licensee's Equipment installed on the Reservoir itself, shall be underground; that asphalt shall be saw cut and re- asphalted; trenches shall be backfilled with controlled density fill to within two inches (2") of finished grade and then asphalted, or to within twelve inches (12") of finished grade in landscaped areas and then compacted with top soil; that no structures, temporary or permanent, except as shown and inventoried on **Exhibits D and E**, shall be constructed on the Premises or the License Area; and that a trailer shall not be placed on the Premises. Licensee's plans and specifications shall be deemed final and approved when signed on each page by an authorized agent or employee of the District. Licensee shall maintain the Communication Site and the facilities thereon and their appearance in a condition satisfactory to District. Licensee acknowledges that particular care shall be taken to maintain points of connection to the Reservoir.

g. Construction Procedure. All work, including work undertaken after the initial installation of Licensee's Equipment, shall be subject to such inspection as District may reasonably deem necessary. Any such inspection may be performed at Licensee's expense by District, at District's then current hourly labor and equipment rate, or by a third party inspection service selected by District. Licensee shall pay the cost of any such inspection within thirty (30) days following the date of District's invoice therefor, together with supporting documentation reasonably evidencing such expense. No welding or penetrations, other than those existing as of the Effective Date, shall be permitted on the Reservoir, and any damage to District property, including but not limited to, painted surfaces, landscaping, fences, Reservoir, and mains, shall be primed and repainted or repaired and restored to the District's satisfaction. Unless waived in advance by District on a case-by-case basis, a preconstruction conference shall be held at the Property prior to commencement of any work on the Communications Site; the preconstruction conference shall be attended by representatives of District and Licensee. The matters to be discussed and resolved at the preconstruction conference shall include the work completion schedule, communication procedures between the Parties, construction permit requirements, procedures and posting, access, inspection staff and their duties and other administrative and general matters as needed. Licensee, at its sole expense, shall obtain all necessary governmental approvals and permits prior to commencing

construction and shall provide District with at least five (5) business days' notice prior to the start of construction. All Licensee contractors and subcontractors shall be duly licensed and registered in the State of Washington. Licensee shall be solely and completely responsible for safety conditions and safety of Licensee's agents, employees, contractors, subcontractors, and any and all other persons and property under its control, in connection with the installation and subsequent maintenance, remodeling and removal of Licensee's Equipment. Licensee shall keep the Premises and the License Areas free from any liens arising out of any work performed by Licensee, any materials furnished or obligations incurred by Licensee and agrees to defend, indemnify and hold harmless District against the same.

h. Alterations. Other than the Equipment along with related appurtenances as shown, configured and inventoried on **Exhibits D and E**, Licensee shall not make any alterations, additions or improvements to the Premises and the License Area ("Alterations") without the District's prior written consent, which consent District may withhold in its sole and absolute discretion. In the event any such Alterations increase the number, type or size of antennae, cables or other Equipment located on the Property or increase the portion of the Property used, then the Rent shall be adjusted by the District as set forth in Section 2h., below. Licensee shall affix permanent labels or tags, with greater than or equal to two-inch (2") font, on each piece of equipment and at each end of each cable or conduit clearly identifying the Licensee as the owner. Any equipment, cabling or other items located on the Property without such identifying label or tag may be removed and disposed of by the District. Licensee shall complete all approved Alterations at Licensee's expense in compliance with all applicable laws and in accordance with plans and specifications approved in advance in writing by the District, using contractors who are bonded, insured, licensed in the state of Washington and approved in advance in writing by District, in a manner so as to not unreasonably interfere with other tenants, and in conformance with the requirements of this Agreement. Licensee shall not commence installation of any Alterations until five (5) days after giving District notice stating the date of installation, so that the District may post and record an appropriate notice of non-responsibility. Licensee shall own and be responsible for all Alterations. Licensee shall remove all Alterations at the end of the Lease Term unless the District requires Licensee to leave specified Alterations at the Premises, in which case Licensee shall not remove such Alterations, and the District shall notify Licensee in writing of the required Alterations to remain as soon as reasonably possible after the notice of termination. Licensee shall immediately repair any damage to the Premises and the License Area, including, but not limited to, paint and coatings, caused by removal of Alterations.

i. Relocation. The District may, at its option, without cost to the District, to accommodate the District's need to utilize the Premises or the License Area, and upon at least three hundred sixty-five (365) days' prior notice, require Licensee to relocate, replace or remove Licensee's Equipment consistent with a capital improvement project approved by the District. Except for such shorter notice as may be reasonable in connection with any unforeseen, non-scheduled, or emergency maintenance or repairs, District may also require Licensee, upon ninety (90) days' prior written notice, to temporarily remove or relocate Licensee's Equipment if determined by District to be necessary for painting or other maintenance or repair of the Reservoir, which temporary relocation shall be at the sole cost and expense of Licensee. The Parties shall work together in good faith to identify a suitable

temporary location of Licensee's Equipment, depending on the scope and duration of the necessary maintenance and repairs.

As to any proposed permanent relocation of Licensee's Equipment, District shall review proposals from the Licensee for a mutually acceptable new permanent or temporary location on the Property or a nearby reservoir site under the District's control to which the Licensee may, within three hundred sixty-five (365) days following the District's notice, relocate Licensee's Equipment at its sole cost and expense under the same terms and conditions of this Agreement. Thereafter, all references to the Premises and the License Area in this Agreement shall be deemed to be references to the relocated site. If a mutually acceptable location cannot be found and confirmed in writing between the Parties within one hundred eighty (180) days of such notice, this Agreement shall terminate effective on the later of the termination date set forth in a termination notice from District to Licensee or 30 days following delivery thereof, and Licensee shall have the same responsibilities and obligations to remove its Equipment and restore the Premises and the License Area as if the term of this Agreement had expired.

j. Signs. Licensee shall not install any signs on the Premises, the License Area, or anywhere else on the Property, other than radio frequency warning signs required by the FCC or other applicable law or government regulation, without District's prior written consent, which may be withheld in the District's sole and absolute discretion. Licensee shall install any approved signage at Licensee's sole expense and in compliance with all applicable laws. Licensee shall not damage or deface the Premises or the License Area in installing or removing signage and shall repair any injury or damage to the Premises or the License Area caused by such installation or removal.

## 2. Rent.

a. Base Rent Payment. Licensee covenants and agrees to pay to District Base Rent ("Base Rent") in an amount determined pursuant to Section 2.b. Base Rent shall be due and payable on or before May 28 of each year of the term hereof, without notice, offset or deduction of any kind. Base Rent payable for any partial year during the term of this Agreement shall be prorated.

b. Annual Base Rent Amount. Commencing retroactively on May 28, 2022, the amount of Base Rent payable hereunder shall be Thirty-Two Thousand One Hundred Thirty-Six and 75/100 Dollars (\$32,136.75) per year. Commencing May 28, 2023, and on May 28 of each year during the Term thereafter (the "Adjustment Date") Base Rent shall be increased to an amount equal to One Hundred Three and One-Half Percent (103.5%) of the annual Base Rent immediately payable prior to said Adjustment Date. Base Rent for each year of any Extended Term shall be determined in the same manner that annual adjustments are determined herein. Additionally, Licensee shall be credited with the prior rent already paid under the Prior Lease from the Commencement Date, as defined below, to the Effective Date. Additional Base Rent due and unpaid for the period from the Commencement Date to the Effective Date shall be paid by Licensee within thirty (30) days of the Effective Date, without penalty or interest.

c. Utility Charge. When permitted by the applicable utility provider, Licensee shall be responsible directly to the servicing utility providers for payment of all utilities required by Licensee's use of the Premises or the License Area, and, if not in place as of the Effective Date, Licensee shall install or cause to be installed separate utility meters at the Property. If a utility provider will not permit Licensee to pay it directly, Licensee shall install a submeter in a location reasonably approved by District, and shall pay to District, no later than ten (10) days following District's billing therefor to Licensee, all cost of that utility service provided to Licensee's Equipment (the "Utility Charge").

d. Additional Payments. Licensee shall be responsible for payment to District of a one-time sum of Five Thousand Three Hundred Fifty-Six and 13/100 Dollars (\$5,356.13) for (i) attorney's fees incurred by District for drafting and negotiating this Agreement; and (ii) engineering costs incurred by District for reviewing plans for Licensee's facilities, repairs, and upgrades of those facilities, and for inspection costs related to construction, repair, or upgrade of those facilities. Of such sum, District acknowledges receipt of Two Thousand Five Hundred Dollars (\$2,500.00). Licensee shall pay to District the remaining balance of Two Thousand Eight Hundred Fifty-Six and 13/100 Dollars (\$2,856.13) within thirty (30) days following the Effective Date.

e. Site Entry Fees and Other Charges. Licensee shall pay to the District a fee, in accordance with the District's established rates for labor, equipment and materials, whenever a District staff member must be present to admit the Licensee, its employees, contractors or agents to the Site. The amount of the fee varies depending on whether the admission is during normal District working hours (7:00 a.m. to 3:30 p.m. Monday through Friday) or not during normal District working hours. In addition to site entry fees, Licensee shall also pay and reimburse to the District for all actual labor and equipment charges, incurred relative to the site entry, standby, or other related personnel costs set forth herein.

When the District provides services not identified above to the Licensee, such as the review of insurance certificates, scheduling of work on the Site, coordinating maintenance activities, engineering and legal questions and issues, approving and providing services to Licensee's vendors, review of changes in Equipment, and any other services rendered with respect to Licensee, all such services shall be invoiced to and paid by Licensee to the District within thirty (30) days of the date of the invoice. Where such services include the services of outside consultants, the outside consultant's charges shall be billed at cost plus ten percent (10%) to Licensee. Services provided by District staff shall be billed at the adopted hourly rates for labor and equipment charges at the time the service is provided. Where such services are provided to more than one licensee with regard to a particular activity or transaction, the District shall make an allocation of the costs to each licensee involved.

f. Taxes. If the Washington leasehold excise tax applies, Licensee shall pay directly to the Department of Revenue before delinquency (and shall simultaneously send to District evidence of payment) the leasehold tax arising from or out of this Agreement, including taxes applicable to the Base Rent and all other fees and charges payable under this Agreement that are due under RCW Ch. 82.29A, and applicable rules of the Washington State Department of Revenue. Licensee shall also pay all other taxes, assessments, levies, fees, and all other governmental charges of every character, general or special, ordinary or extraordinary, including any city or county excise, or utility tax, which



are payable during any portion of the Term and are levied upon or assessed as a result of the Agreement, any sublease, or against Licensee's Equipment or improvements located on the Premises or the License Area, any part thereof, any improvements constructed by Licensee located thereon and any of Licensee's personal property or fixtures located thereon (collectively, "Taxes"). Licensee's liability for taxes pursuant to this paragraph shall survive the termination of the Agreement.

g. Fines and Penalties. Licensee shall pay all fines and penalties levied against it by a third party governmental agency or entity and arising out of the installation, maintenance and operation of its equipment on the Property.

h. Adjustment of Base Rent in Event of Alterations. In the event that, following the installation, in accordance with Section 1.f, above, the additional Equipment and related appurtenances as shown, configured, and inventoried on Exhibit E hereto, Lessee shall desire to make any Alterations that would increase the number, type or size of arrays, antennae, cables or other Equipment located on the Property, or increase the portion of the Premises or License Area used, then Base Rent shall be increased as required by the District. Once increased, Base Rent shall not be decreased if Licensee subsequently reduces either the quantity of Equipment on the Premises or portion of the Licensed Area used. Any adjustment in Base Rent shall be effective on the date that the District shall have approved such Alterations, in accordance with Section 1.h, above, and shall be prorated to the next annual Adjustment Date.

### 3. Term of Agreement.

The Parties hereby agree that the Prior Lease shall be deemed terminated effective as of 11:59 p.m. on May 27, 2022 (the "Prior Lease Termination Date"), as if such date were originally set forth as the termination date in the Prior Lease. Licensee shall remain liable for all rent and any other charges payable under the Prior Lease for the period up to and including the Prior Lease Termination Date, even if such sums are billed subsequent to the Prior Lease Termination Date, and for all other obligations arising under the Prior Lease for the period up to and including the Prior Lease Termination Date. The termination of the Prior Lease shall be effective without further documentation.

The initial term of this Agreement shall be ten (10) years (the "Initial Term"), commencing on May 28, 2022 (the "Commencement Date") and terminating on May 27, 2033 (the "Termination Date"). This Agreement shall automatically be renewed thereafter for three (3) additional periods of five (5) years each (each a "Renewal Term" and collectively the "Renewal Terms"), unless either Party shall provide the other Party with written notice of its intention not to renew at least six (6) months prior to the commencement date of the succeeding Renewal Term. The maximum term of this Agreement shall therefore be twenty-five (25) years.

### 4. Security Deposit.

Licensee shall deposit with District, within thirty (30) days following the Effective Date, the sum of Thirty-Two Thousand One Hundred Fifty Dollars (\$32,150.00) (the "Security Deposit") to be held as security for the faithful performance by Licensee of all terms, covenants, and conditions of this Agreement during the Term. If Licensee defaults with respect to any provision of this Agreement, District may use, apply or retain all or any part of this Security Deposit for the payment

of any sum in default, or for the payment of any amount which District may spend or become obligated to spend by reason of Licensee's default, or to compensate District for any other loss or damage which District may suffer by reason of Licensee's default. Except for any use, application or retention of any portion of the Security Deposit following a default by Licensee in payment of Base Rent or any other monetary amounts payable by Licensee hereunder, District shall provide Licensee written notice of its intention to use, apply any portion of the Security Deposit and a description of the loss, damage or expense for which District will compensate itself from the Security Deposit. If any portion of the deposit is so used, Licensee shall, within thirty (30) days after written demand therefor, deposit with District cash in an amount sufficient to restore the Security Deposit to its original amount, and Licensee's failure to do so shall be a material default under this Agreement. District shall not be required to keep this Security Deposit separate from its general funds, and Licensee shall not be entitled to interest on such deposit. If Licensee shall fully perform every provision of this Agreement, the Security Deposit or any balance thereof shall be returned to Licensee within sixty (60) days after Licensee has vacated the Premises and the License Area at the expiration of the Term or sooner termination of the Agreement. If District's interest in this Agreement is terminated, assigned or transferred, District shall transfer the deposit to District's successor-in-interest, and thereafter shall have no further liability to Licensee with respect to the Security Deposit.

5. Interference.

a. Licensee acknowledges the District may elect to enter into agreements with other wireless telecommunications operators, and that Licensee may be required to share certain common facilities with those operators. It is the District's intent to consolidate and coordinate all such wireless telecommunications facilities at the Property to maximize use of space and minimize the negative effects (visual and otherwise) of wireless telecommunications equipment and antennas at and on the Property. Licensee acknowledges it has no exclusive rights for operating a wireless telecommunications facility on the Property and that the District has the right to enter into leases, easements, licenses, permits, and agreements with other telecommunications operators. Licensee agrees to reasonably cooperate with the other wireless telecommunications operators and the District to coordinate efficient collocation of equipment and antennas and to promptly resolve any interference issues that may arise on account of the presence of multiple operators

b. Licensee acknowledges that District has leased or licensed, or may lease or license other portions of the Property in the future and grant non-exclusive licenses for use of the top surface of the Reservoir (other than the Licensed Area. District does not represent or warrant noninterference with Licensee's communications operations by any other user, and is in no way responsible or liable for any interference with Licensee's use of the License Area or Premises which may be caused by the use or operation of equipment of a licensee or lessee with facilities or equipment on the Reservoir. If, however, the equipment of any other licensee or lessee is not installed or operated in compliance with applicable laws or the manufacturer's specifications and, as a result of such noncompliance, causes material, adverse interference with Licensee's operation of its Equipment on the Property, and if Licensee is unable to resolve this interference with the other licensee or lessee, whether by agreement, dispute resolution or litigation, then Licensee may, upon thirty (30) days' written notice to District, terminate this Agreement, as Licensee's sole and exclusive remedy against the District under this Agreement. In such event, Licensee, no later than the 30<sup>th</sup> day following such written termination notice to District, shall remove its Equipment, and restore the Licensed Area and Premises in compliance with Section 16, below. Nothing contained

herein shall be deemed to preclude Licensee from seeking equitable remedies against the interfering user at Licensee's sole cost and expense. Licensee shall cooperate with all other licensees or lessees to identify the causes, and work toward the resolution, of any electronic interference problem.

c. Licensee shall not install, use or maintain any Equipment on the Premises which causes material electronic interference with telecommunications equipment or the permitted operations of any user of telecommunications equipment on the Reservoir as of the Effective Date, or, as to any Equipment that Licensee may install in the future, any then-existing users. Licensee's operations on the Property shall comply with Western Washington Cooperative Interference Committee's Emergency Standard #6 Rev. C (02-97) for radio transmitting and receiving devices and FM Broadcast, as presently adopted or as amended in the future, and all Federal Communications Commission and any other regulations and requirements applicable to such operations. In addition, Licensee agrees to eliminate, at Licensee's own expense, any radio, television or other electronic interference caused by any of Licensee's Equipment or operations and affecting surrounding residences as of the Effective Date or, as to any Equipment that Licensee may install in the future, any then-existing users' equipment or facilities on the Property during the term of this Agreement. Licensee further agrees to accept such interference as may be received from District operated telecommunications or other facilities presently or in the future located upon and/or communicating with District's facilities located on the Property.

6. Condemnation.

If all or part of the Property is taken by condemnation such that the Premises or License Area are no longer usable for reconstruction of a Communications Site, this Agreement shall terminate as of the date possession is taken by the condemning authority unless Licensee's equipment and improvements can be relocated to another position at the Property acceptable to Licensee and District. Licensee shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of Licensee's equipment and improvements and relocation costs.

7. Damage or Destruction.

In the event that Licensee's Equipment is damaged by fire, earthquake, act of war, or other extraordinarily casualty (any of the foregoing referred to herein as a "Casualty Event"), District shall not be obligated to repair or rebuild any portion of the Reservoir site or Licensee's Equipment or the functionality thereof, or to compensate Licensee for any loss resulting therefrom. Within forty-five (45) days following the date of any such Casualty Event, District agrees to notify Licensee in writing as to whether District will restore all or any portion of the Reservoir site (District's "Election Notice"), which decision shall be based solely on District's need therefor. If District elects to restore the Reservoir site, District shall include with its Election Notice District's reasonable estimate of the time required to complete such restoration. If the estimated time to complete such restoration shall exceed one hundred eighty (180) days from the date of the Casualty Event and if, as a result of the Casualty Event, Licensee's Equipment shall have been rendered unusable in whole or substantial part, Licensee may, upon written notice given to District no later than thirty (30) days following receipt of the Election Notice, elect to terminate this Agreement. In the event that District elects not to restore the Reservoir site, either party may terminate this Agreement upon thirty (30) days' prior written notice to the other, in which event this Agreement shall terminate on the thirtieth (30<sup>th</sup>) day following the terminating party's notice, as if such date were originally set forth as the termination

date herein. Termination pursuant to this Section shall not relieve Licensee from the obligation to surrender the Premises and License Area as required pursuant to Section 16, below. In the event neither party so elects to terminate this Agreement, this Agreement shall continue in full force and effect. From and after the date of any Casualty Event until the earlier of the effective date of any termination pursuant to the terms hereof or the date that the Reservoir is rebuilt or restored, Licensee's obligation for Base Rent shall be abated in proportion to Licensee's inability to use the Reservoir as a Communications Site.

8. Default by District: Termination by Licensee.

District shall be deemed to be in default hereunder if District fails to comply with any material term, condition, or covenant of this Agreement and does not cure such failure within the following time periods following receipt of written notice thereof from Licensee: (a) one (1) business day, in the case of failure to provide access, subject to and in accordance with the provisions of Section 1.c, or (b) thirty (30) days, in all other cases; provided, however, that in the event of a cure which requires in excess of thirty (30) days to complete, District shall be deemed in default hereunder if District has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion. Licensee may terminate this Agreement upon the giving of thirty (30) days' written notice to District in the event of any such default, or if either of the following events occur: (a) Licensee fails, despite reasonable efforts to do so, to obtain or loses any necessary permits, approvals or orders and is thereby unable to use the Premises or License Area as a Communications Site, or (b) the FAA, FCC, or other governmental agency requires any conditions as a result of this Agreement that are unacceptable to Licensee.

9. Default by Licensee: Termination by District: Remedies. The occurrence of any of the following shall constitute a default and material breach of this Agreement by Licensee:

(a) failure by Licensee to pay any Base Rent, Utility Charge, or other amount required hereunder when due if such failure shall continue for more than ten (10) business days after delivery of written notice to Licensee of such failure to make timely payment; or

(b) failure by Licensee to comply with any material term, condition, or covenant of this Agreement, other than the payment of the obligations set forth in subparagraph (a), above, if such failure is not cured within thirty (30) days after delivery of written notice to Licensee, or, in the event of a cure that requires in excess of thirty (30) days to complete, if Licensee has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion; or

(c) if Licensee becomes insolvent, makes a transfer in fraud of creditors, makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the Federal Bankruptcy Code, or is adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder, or if a receiver or trustee is appointed for all or substantially all of the assets of Licensee due to Licensee's insolvency.

In the event of any default by Licensee as aforesaid, District may, in addition to any remedies available to District at law or in equity, terminate this Agreement or Licensee's rights hereunder upon thirty (30) days' written notice to Licensee. In the event of any such termination, Licensee shall immediately remove all of Licensee's Equipment and any other improvements from the

Property and restore the same in accordance with Section 16, below, and, upon District's demand therefor, pay to District a sum of money equal to (i) the amount of unpaid Base Rent and other charges payable hereunder as of the date of termination; (ii) the amount by which the Base Rent and other charges payable hereunder for the balance of the then current term exceeds the amount of such rental loss that Licensee proves District could reasonably have avoided; and (iii) any other amount necessary to compensate District for all damages caused by Licensee's failure to perform its obligations under this Agreement.

In addition, District may terminate this Agreement upon prior written notice to Licensee:

(d) if an engineering analysis pursuant to Section 21 establishes that the Reservoir cannot support Licensee's additional Equipment;

(e) if any governmental entity requires any conditions as a result of this Agreement that are unacceptable to District; or

(f) if the District determines the tank and/or Property is no longer needed for its operations and deems it as surplus.

In the event of either of the occurrences set forth in subparagraphs (d) and (e), above, District shall endeavor to give Licensee thirty (30) days' prior written notice of termination, or if thirty (30) days' notice is not feasible, as much prior written notice as may be feasible and practicable under the circumstances. In the event of the occurrence set forth in subparagraph (f), above, the District shall endeavor to give Licensee at least one (1) year's prior written notice of termination, or if one year's notice is not feasible, as much prior written notice as may be feasible and practicable under the circumstances.

10. Interest: Late Charges.

If Licensee fails to pay, when due and payable, any sum due under the Agreement, that unpaid amount shall bear interest at the lesser of twelve percent (12%) or the maximum amount permitted by law per annum until paid. In addition, Licensee acknowledges that the late payment by Licensee of any sums due to District from Licensee hereunder will cause District to incur certain costs and expenses not contemplated under this Agreement, the exact amount of such costs being extremely difficult and impractical to ascertain. Therefore, if any sum due to District from Licensee hereunder is not received by District or District's designee within ten (10) days after written notice that such payment is past due, Licensee shall immediately pay to District a late charge equal to five percent (5%) of such payment.

11. Warranties and Covenants of District.

District represents and warrants that the District has legal right to possession of the Property and the power and the right to enter into this Agreement. District covenants and agrees that Licensee, subject to the remaining terms and provisions hereof, upon the faithful performance of all of the terms, conditions, and obligations of Licensee contained in this Agreement, shall peaceably and quietly hold and enjoy the Premises and the License Area upon the terms, covenants, and conditions set forth in this Agreement throughout the Agreement Term against any adverse claim of District or any party claiming under District.

12. Warranties and Covenants of Licensee.

Licensee represents and warrants to District that: (a) Licensee has the power and the right to enter into this Agreement; and (b) Licensee's operation of the Communications Site shall not interfere in any way with the District's operation, maintenance, repair or replacement of District's Reservoir and related appurtenances and facilities, or with the operations of users of telecommunications equipment on the Property as of the Effective Date. Licensee and each person executing this Agreement on behalf of Licensee further represent and warrant to District that the execution and delivery of this Agreement by Licensee is authorized by appropriate corporate action, that each person so executing this Agreement is authorized to execute and deliver the same on behalf of Licensee, and that the person(s) executing and delivering this Agreement is/are the only one(s) whose signature is required to cause this Agreement to be binding upon Licensee. Licensee covenants and agrees that the installation, operation, and removal of Licensee's Equipment shall not cause any damage whatsoever to the Property or any improvements located upon the Property, whether owned by District or others; and Licensee shall pay all taxes due and owing at the times required as provided in Section 2.f herein. Licensee shall at all times comply with all laws, ordinances, rules and regulations (collectively, "Regulations") of local, county, state, and federal governmental authorities relating to the installation, maintenance, height, location, use, operation, and removal of improvements authorized herein. In addition, Licensee's operation and use of the Premises, the License Area, and its Equipment shall comply with all applicable local, county, state and federal laws and regulations governing noise levels ("Noise Regulations"). Licensee may, at Licensee's expense, cause a noise study to be performed by a vendor reasonably approved by District, in which event District shall give reasonable consideration to any noise mitigation solution recommended by such vendor. Otherwise, Licensee shall install soundproofing if and as required by District in order to comply with such Noise Regulations.

13. Liability and Indemnification.

Licensee hereby agrees to and shall indemnify and hold District, its elected or appointed officers, officials, employees, agents and volunteers harmless from and against any and all demands, claims, suits, risks, liabilities and obligations of any nature and any and all costs or expenses of any nature including, but not limited to, all losses, damages, judgments and attorney's fees arising from injury to or death of any and all persons and/or all property damage of any kind, whether tangible or intangible, including loss of use, in connection with or related to the installation, operation, maintenance, replacement and/or removal of Licensee's Equipment upon the Premises or License Area and/or the presence of Licensee, its employees, agents, contractors, or their property upon or in proximity to the Property, except only those losses resulting solely from the negligence or willful misconduct of District, its elected or appointed officers, employees, volunteers and agents. Licensee's obligation hereunder shall include, without limitation, the duty to indemnify, hold harmless and defend District from and against any and all claims for damages by third parties against District arising out of, related to or caused by any activities undertaken by or on behalf of Licensee, its agents, contractors, representatives, or sublessee in connection with the installation, operation, maintenance or removal of any structure, equipment or facility on the Property, the License Area, or the Premises. Licensee's obligation hereunder is without prejudice to Licensee's rights to assert all defenses Licensee may have against any claimant and the right to seek contribution from any other person or entity which may be responsible for all or any portion of the alleged claim. District shall notify Licensee of any claim as to which Licensee has the obligation to indemnify District under this

Agreement and Licensee shall, at its sole cost and expense, defend District against such claim. Licensee's defense shall include, but not be limited to, appearing and defending against any lawsuit and paying any amounts required to be paid pursuant to any judgment or settlement. Licensee hereby further indemnifies and holds District, its elected or appointed officers, officials, employees, agents and volunteers from and against any and all demands, claims, suits, risks, liabilities, and obligations of any nature and any and all costs or expenses of any nature, including but not limited to, all losses, damages, judgments and attorney's fees arising from any breach or default in the performance of any obligation to be performed by Licensee, or any subtenant of Licensee under the terms of this Agreement.

Notwithstanding the above, if a court determines that this Agreement is subject to the terms of RCW 4.24.115, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Licensee and District, its commissioners, officers, employees or agents, Licensee's liability under this Section shall be limited to the extent of Licensee's negligence and that of its agents, employees, contractors, assignees and sublessees, including their proportional share of costs, attorney's fees, and expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage. District and Licensee specifically agree that the provisions of this Section also apply to any claim of injury or damage to the persons or property of Licensee's employees. Licensee acknowledges and agrees that, as to such claims, Licensee, with respect to District, hereby waives any right of immunity which Licensee may have under industrial insurance (Title 51 RCW as amended and under any substitute or replacement statute). This waiver was specifically negotiated by District and Licensee, is solely for the benefit of District and Licensee and their successors and assigns, and is not intended as a waiver of Licensee's right of immunity under said industrial insurance for any other purpose.

14. Insurance.

Licensee shall obtain and maintain in force throughout the Agreement Term, a commercial general liability insurance policy (or policies) insuring against claims for personal injury or death and property damage arising out of the actions of Licensee, its contractors, employees, and agents on or around the Property. The insurance policy(ies) shall be with one or more insurance companies that have an A.M. Best's rating of A VII or better and that are approved by the Insurance Commissioner of the State of Washington pursuant to Title 48 RCW. The limits and coverages of said insurance shall be as set forth on **Exhibit F** attached hereto. District reserves the right to require higher limits, different and/or additional coverages from time to time if recommended by District's insurer, but not more frequently than once during any five (5) year period of the term of this Agreement, as the same may be extended. The insurance policy(ies) shall not have deductibles or self-insurance retentions in excess of an aggregate of Fifty Thousand Dollars (\$50,000.00) unless approved in writing in advance by District. Providing coverages in the amounts set forth in **Exhibit F** shall not be construed as relieving Licensee from liability for amounts in excess of such limits. The insurance policy(ies) shall specifically include District, its elected or appointed officers, officials, employees, agents, and volunteers as additional insured (ISO CG 20 26 endorsement or equivalent acceptable to the District) with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of Licensee; and (b) products and completed operations of Licensee or premises used by Licensee. District's additional insured status shall not extend, however, to (x) claims for punitive or exemplary damages arising out of the acts or omissions of District, its agents, employees or independent contractors, (y) to any claims where such coverage is prohibited by law, or (z) to any claims arising

out of the sole negligence or District, its agents, employees, or independent contractors. The policy(ies) shall protect each insured in the same manner as though a separate policy had been issued to each, except as to claims caused solely by the additional insured. The inclusion of more than one insured shall not affect the rights of any insured with respect to any claim, suit, or judgment made or brought by or for any other insured or any employee of any other insured, subject to the policy limits. The coverages provided by the required policy(ics) shall be primary to, not in excess of, and shall not contribute with, any insurance maintained by District, except with respect to losses attributable to the sole negligence or intentional misconduct of District, its elected or appointed officers, officials, employees, agents or volunteers. The policy(ies) shall contain a provision providing that District has no obligation to report events which might give rise to a claim until a claim has been filed with District's Board of Commissioners. District shall be given thirty (30) days' prior written notice (in accordance with Section 19 hereinbelow) of cancellation or any nonrenewal of coverage required hereunder that is not replaced. Licensee shall maintain workers' compensation insurance for all of its employees engaged in work on the Property. If such work is contracted, Licensee shall require that all contractors provide workers' compensation insurance for all of their employees engaged in work on the Property. Licensee's, or its contractors, Washington Department of Labor and Industries account number shall be noted on such policies of insurance. If any class of employees engaged in work on the Property is not covered under workers' compensation insurance, Licensee shall maintain, and cause each contractor to maintain, employer's liability insurance for limits of \$2,000,000.00 for each employee for disease or accident, and shall furnish District with satisfactory evidence of such insurance. Licensee shall file with District, for District's approval, a Certificate of Insurance (with endorsements attached) of all insurance policies as are necessary to comply with the requirements of this Section. On or before the expiration of any policy required by this Section, Licensee shall deliver to District evidence that such insurance has been continued.

15. Releases.

Licensee releases District from any and all claims it might have against District arising from or related to (a) Licensee's Equipment being unusable for communications purposes or for any delay in restoring the Reservoir to a condition in which Licensee's Equipment could be rendered usable for communications purposes; and (b) any damage to person or property incurred as a result of any acts or omissions of any contractor District hires to perform repairs or maintenance on or about the Property or to make any improvement thereto.

16. Title to and Removal of Licensee's Equipment.

Licensee's Equipment and all improvements installed at and affixed to the Premises or the Property by Licensee shall be and shall remain the property of Licensee. Licensee shall, within thirty (30) days after the expiration or earlier termination of this Agreement, remove all of Licensee's improvements, Equipment, fixtures, and any other personal property of Licensee from the Premises and the License Area and restore, at Licensee's sole expense, the Premises, License Area and the Property as close as is practicable to the condition it was in when Licensee originally entered into possession and/or use, reasonable wear and tear and casualty beyond Licensee's reasonable control excepted. Upon such removal, District shall inspect the Property to review and approve the work performed. District shall have the right to require Licensee to perform additional work necessary to restore the Property to the condition required by this Section. In the event that Licensee shall have failed to remove all of said Equipment and restore the Premises, License Area and the Property as aforesaid within ten (10) days following the expiration or earlier termination of this Agreement, then



without limitation of any other remedies available to District hereunder or at law or in equity, (a) the holdover provisions of Section 17, below, shall apply for the period beginning on the first day following the expiration or termination date of this Agreement until all of said improvements, equipment, fixtures and personal property shall have been removed, and (b) District may, but shall not be required to, at any time following the expiration of such 10-day period remove, store and dispose of all of such improvements, equipment, fixtures, and personal property and perform Licensee's obligations to restore the Premises, License Area and Property at Licensee's sole cost and expense and without liability to Licensee.

17. Holding Over.

Subject to the 30-day period set forth in Section 16 for removal of Licensee's improvements and Equipment, if, without the District's prior written consent, Licensee holds over after the expiration or sooner termination of this Agreement, District shall, without further notice, have all remedies available to it under applicable law. Without limitation of the foregoing, Base Rent during the period of such holdover shall increase to one hundred fifty percent (150%) of the Base Rent last payable pursuant to Section 2.b, above, prorated monthly during the period of the holdover. If Licensee holds over after the expiration or sooner termination of this Agreement with the prior written consent of the District, the tenancy shall be month-to-month, subject to the provisions of this Agreement, which tenancy may be terminated as provided by law. During said month-to-month tenancy, unless a different rate is agreed upon, the Rent payable to District by Licensee shall be one hundred twenty-five percent (125%) of the Base Rent last payable pursuant to Section 2.b, above, prorated monthly during the period of holdover, and upon all of the other terms, covenants and conditions set forth in this Agreement so far as the same are applicable. If Licensee shall fail to surrender the Premises as required under Section 16, above, upon the termination of this Agreement, in addition to any other liabilities to District arising therefrom, Licensee shall and does hereby agree to indemnify and hold District harmless from loss and liability resulting from such failure.

18. Assignment and Subletting.

Licensee shall not assign, sublease, otherwise transfer or encumber all or any part of Licensee's interest in this Agreement without District's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. District shall consent to a transfer of Licensee's rights hereunder to (a) an Affiliate (as hereafter defined) of Licensee, (b) an entity whose net worth is at least One Hundred Million Dollars (\$100,000,000.00), or (c) an entity that acquires all or substantially all of Licensee's assets in the Seattle-Tacoma FCC market, *provided* that Licensee, not less than thirty (30) days prior to the effective date of the assignment or transfer, shall have delivered written notice to District setting forth the name of the transferee and its place of incorporation or formation; its address and full contact information, including phone numbers; the basis for the transfer (*e.g.*, a transfer to a purchaser of all or substantially all of Licensee's assets, a transfer to an Affiliate, as hereafter defined); if a transfer to an Affiliate, a description of the transferee's affiliation with Licensee; and, if applicable, the transferee's net worth, including reasonable evidence thereof. Each assignee or transferee shall assume and be deemed to have assumed this Agreement and shall be and remain liable jointly and severally with Licensee for the payment of all amounts due hereunder, and for the due performance of all the covenants and conditions herein set forth herein to be performed by Licensee. No assignment or transfer shall be effective or binding on District unless the assignee or transferee shall, concurrently, deliver to District a recordable instrument which contains a covenant of assumption by said assignee or transferee; provided that a failure or refusal to so execute said instrument shall not release or discharge the assignee or transferee from its liability

aforesaid. As used in this Agreement, an "Affiliate" of a person or entity shall mean a person or entity controlling, controlled by or under common control with that person or entity. "Control" shall mean the power directly or indirectly, by contract, ownership of voting securities, or otherwise, to direct the management and policies of the person or entity.

Should District sell, lease, transfer or otherwise convey all or any part of the Property to any transferee other than Licensee, then such transfer shall be subject to this Agreement and all of Licensee's rights hereunder. Until Licensee receives the following documents, Licensee shall not be responsible for any failure to make payments under this Agreement to such transferee:

- i. Copy of deed, bill of sale, or other agreement evidencing transfer of the Property or District's rights hereunder; and
- ii. Full contact information for the new licensor, including phone number(s).

19. Notices and Other Communications.

All notices hereunder must be in writing and shall be delivered by hand, by nationally recognized overnight courier service, or by U.S. registered or certified mail, return receipt requested, postage prepaid, to the addressees set forth below:

Licensee: T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: Lease Compliance  
Site No. SE03880A

District: Highline Water District  
Attn: General Manager  
23828 – 30<sup>th</sup> Ave. S.  
Kent, WA 98032

Any notice or other communication shall be deemed effectively given (a) on the date of delivery, if delivered by hand, (b) on the date of delivery, if delivered by nationally recognized overnight courier service, or (c) on the third business day following deposit in the U.S. Mail, if delivered by U.S. Mail. Either Party may change its address for notices upon thirty (30) days' prior written notice to the other as provided herein.

20. Hazardous Substances.

Licensee agrees that it will not use, generate, store or dispose of any Hazardous Substances on, under, about or within the Property in violation of any law or regulation. Notwithstanding any provision of this Agreement to the contrary, Licensee agrees to take any required remedial action and to defend, indemnify, and hold harmless District and its elected and appointed officials, employees and agents against any and all losses, liabilities, claims, and/or costs (including reasonable attorney's fees and costs) arising from any breach by Licensee of any representation, warranty, or agreement contained in this Section. As used in this Section, the term "Hazardous Substance" shall mean any pollutant, contaminant, hazardous, toxic, or dangerous waste, chemical substance or material or any other substance or material regulated pursuant to environmental laws or regulations (either local,

state or federal, including but not limited to CERCLA, RCRA, the Washington Model Toxic Control Act and the Washington Hazardous Waste Management Act) including, without limitation, asbestos, petroleum or petroleum byproducts, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, PCBs or any other substance defined under law as a "hazardous waste," "dangerous waste," "extremely hazardous waste," "hazardous material," "toxic substance," or "toxic chemical." Licensee agrees that it will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent the same apply to Licensee's activity conducted in or on the Property.

Except for any hazardous substances that may during the term of the Prior Lease have been released onto the Property by Licensee or its predecessor-in-interest, District represents, to its actual knowledge, that (a) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing materials and lead paint, in reportable quantities, and (b) the Property has never been subject to any contamination or hazardous materials conditions resulting in any environmental investigation, inquiry or remediation. As used herein, "actual knowledge" means the actual current knowledge of District's general manager, Matt Everett.

21. Engineering Study.

To determine whether the design parameters for weight, wind loads, etc. on the Reservoir will be exceeded by Licensee's placing of additional Equipment on the Reservoir, Licensee, prior to installation of any equipment on the Reservoir, shall cause an engineering study to be performed and delivered to District, which District shall cause to be reviewed by a third party consultant. Licensee shall not submit plans for any alterations or the addition of any Equipment that would require reinforcement of the Reservoir or its appurtenances. .

22. Non-Waiver.

A waiver of any right under this Agreement must be in writing and signed by the waiving party. The waiver by District of the breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of the breach of any other term, covenant, or condition or any subsequent breach of the same term, covenant, or condition. The acceptance of any sum due hereunder by District shall not be deemed to be a waiver of any preceding default by Licensee of any term, covenant, or condition of this Agreement, other than the failure of Licensee to pay the particular sum so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such sum.

23. Written Agreement to Govern.

This Agreement is the entire understanding and agreement between the Parties relating to the subjects it covers. The Recitals are a part of this Agreement and all Exhibits attached hereto are incorporated into this Agreement by reference. Any amendments to this Agreement must be in writing and executed by both Parties.

24. Governing Law, Venue and Attorney's Fees.

This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Washington. Any action or proceeding arising out of the interpretation or enforcement of any terms, conditions or obligations of this Agreement shall be brought in the King County, Washington Superior Court. The prevailing party in any action or proceeding brought to enforce this Agreement shall be entitled to recover its reasonable attorney's fees, costs, and expenses in connection with such action or proceeding from the other party.

25. Further Assurances.

In addition to the actions specifically mentioned in this Agreement, the Parties shall each do whatever may be reasonably necessary to accomplish the transactions contemplated in this Agreement including, without limitation, execution of all applications, permits, and approvals required of District for work on the Communications Site.

26. Licensee Contact.

Throughout the term hereof, Licensee shall maintain, on a 24-hour basis, a working telephone number and email address so as to enable District to reach directly a live contact person responsible for communications regarding Licensee's maintenance and construction matters on the Reservoir Site (the "Contact Person"). The communication matters for which such Contact Person(s) shall be responsible include, without limitation, those relating to maintenance and other work to be performed on the Site, whether by Licensee or its vendors, contractors or agents. Licensee agrees to provide District with reasonable prior notice of any change in such 24-hour telephone number. The Licensee's telephone number is NOC 877-611-5868 and the email address is, PropertyManagement@t-mobile.com.

27. Survival.

Licensee's obligations and warranties under the terms of this Agreement shall survive the transfer or sale of the Property and the expiration or sooner termination of this Agreement.

28. Severability.

Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provision shall remain in full force and effect.

29. Interpretation.

Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) the use of the term "including" will be interpreted to mean "including but not limited to," (iii) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (iv) use of the terms "termination" or "expiration" are interchangeable; (v) reference to a default will take into consideration any applicable notice, grace and cure periods; and (vi) the singular use of words shall include the plural, where appropriate.

30. Recording.

This Agreement shall not be recorded. At the request of either Party, and at the expense of the requesting Party, the Parties shall execute and record a short form memorandum of agreement in recordable form that identifies the Parties, the commencement and expiration dates of the Agreement, the legal description of the Property, and such other matters as the Parties may agree.

31. No Light, Air or View Easement.

Licensee has not been granted an easement or other right for light, air or view to or from the Premises, the License Area or the Property. Any diminution or obstruction of light, air or view by any structure which may be erected on or adjacent to the Reservoir, the Premises or the Property shall not affect this Agreement, the Licensee's obligations hereunder or impose any liability on the District.

32. Captions. The captions of this Agreement are provided for convenience only and shall not be used in construing its meaning.

33. Time of the Essence.

Time is of the essence in the performance of all terms, covenants and conditions in this Agreement.

34. Authority.

If Licensee is a corporation, partnership or limited liability company, each individual executing this Agreement on Licensee's behalf represents and warrants that he or she is duly authorized to execute and deliver this Agreement on Licensee's and that this Agreement is binding upon Licensee according to its terms. If Licensee is a corporation, each individual executing this Agreement on Licensee's behalf represents and warrants that his or her authorization to execute and deliver this Agreement was in accordance with a duly adopted resolution of Licensee's Board of Directors and Licensee's Bylaws. If Licensee is a limited liability company, each individual executing this Agreement on Licensee's represents and warrants that his or her authorization to execute and deliver this Agreement was in accordance with a duly adopted resolution of Licensee's Members and Operating Agreement. Concurrently with execution of this Agreement, Licensee shall deliver to the District such evidence of authorization as the District may require.

35. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of the same, when taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**“DISTRICT”:**

HIGHLINE WATER DISTRICT,  
a Washington municipal corporation

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

Print Name: \_\_\_\_\_

Its General Manager

**“LICENSEE”:**

T-MOBILE WEST LLC,  
a Delaware limited liability company

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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 he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the General Manager of HIGHLINE WATER DISTRICT, a Washington special purpose municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Print name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at  
\_\_\_\_\_  
My appointment expires: \_\_\_\_\_

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 s/he signed this instrument, on oath stated that s/he was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_, of T-MOBILE WEST LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Print name)  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_, residing at  
\_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL PROPERTY**

The following described real estate, situated in the County of King, State of Washington:

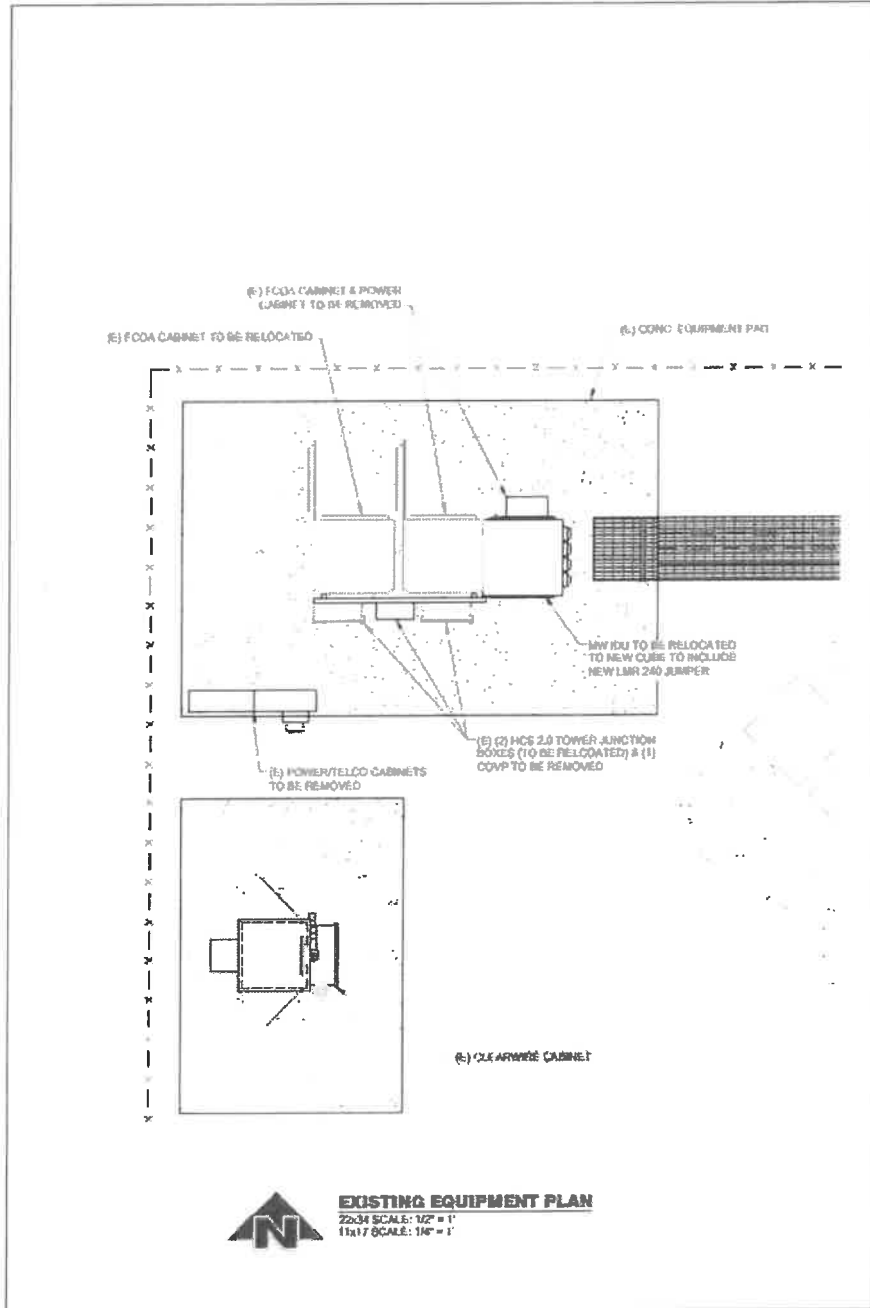
Lots 1 through 8, inclusive, in Block 94 of Southern Pacific Land Company's Second Addition to Des Moines as recorded in Volume 4 of Plats on Page 49, records of King County; situated in the County of King State of Washington.

King County filing numbers 4498423; 4498451 and 4498424, Volume 3402, pages 47, 48, and 72.



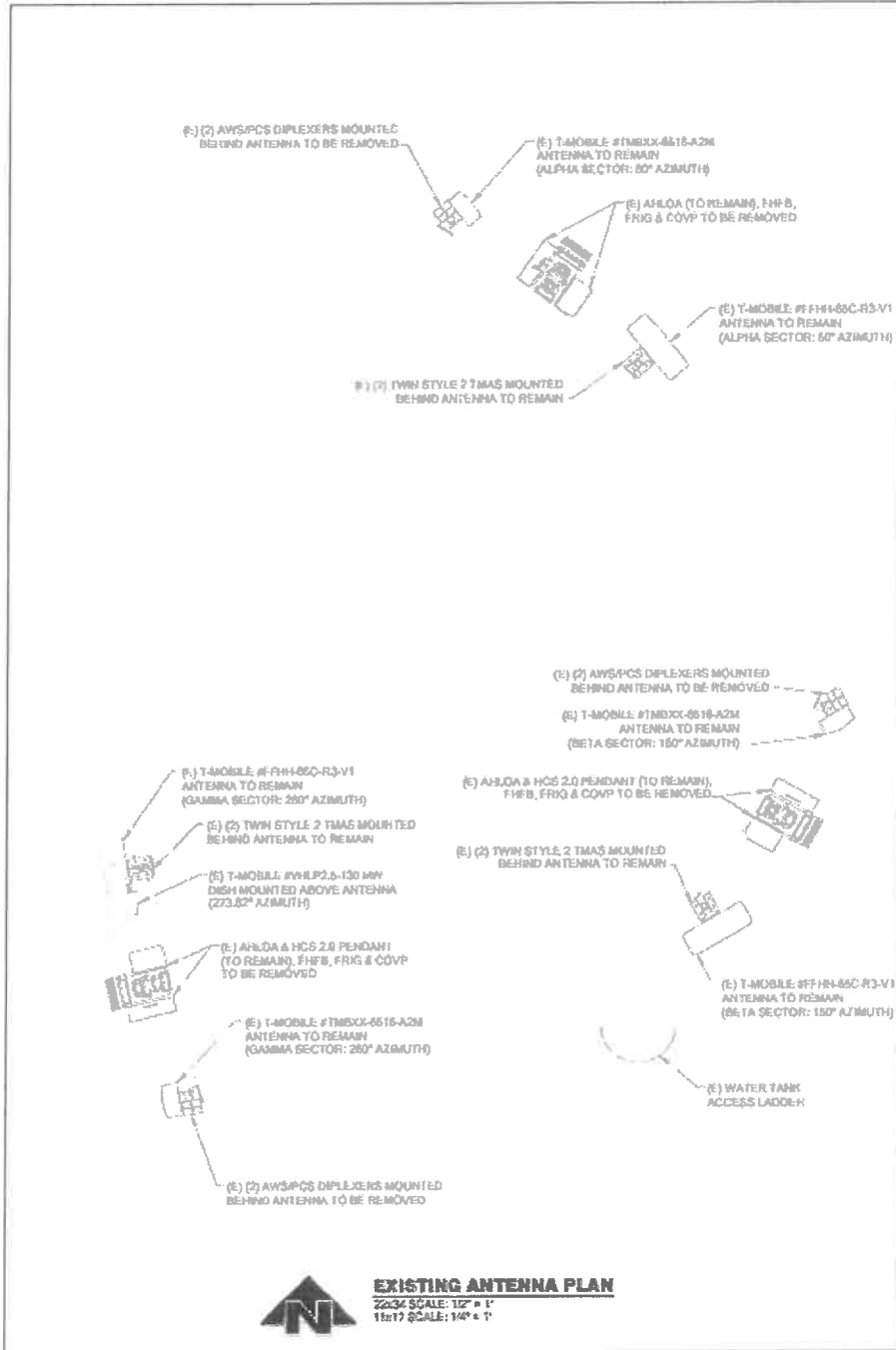
**EXHIBIT B-1**

**PREMISES AND  
DEPICTION OF LICENSEE'S FACILITIES AND EQUIPMENT  
PER PRIOR LEASE**



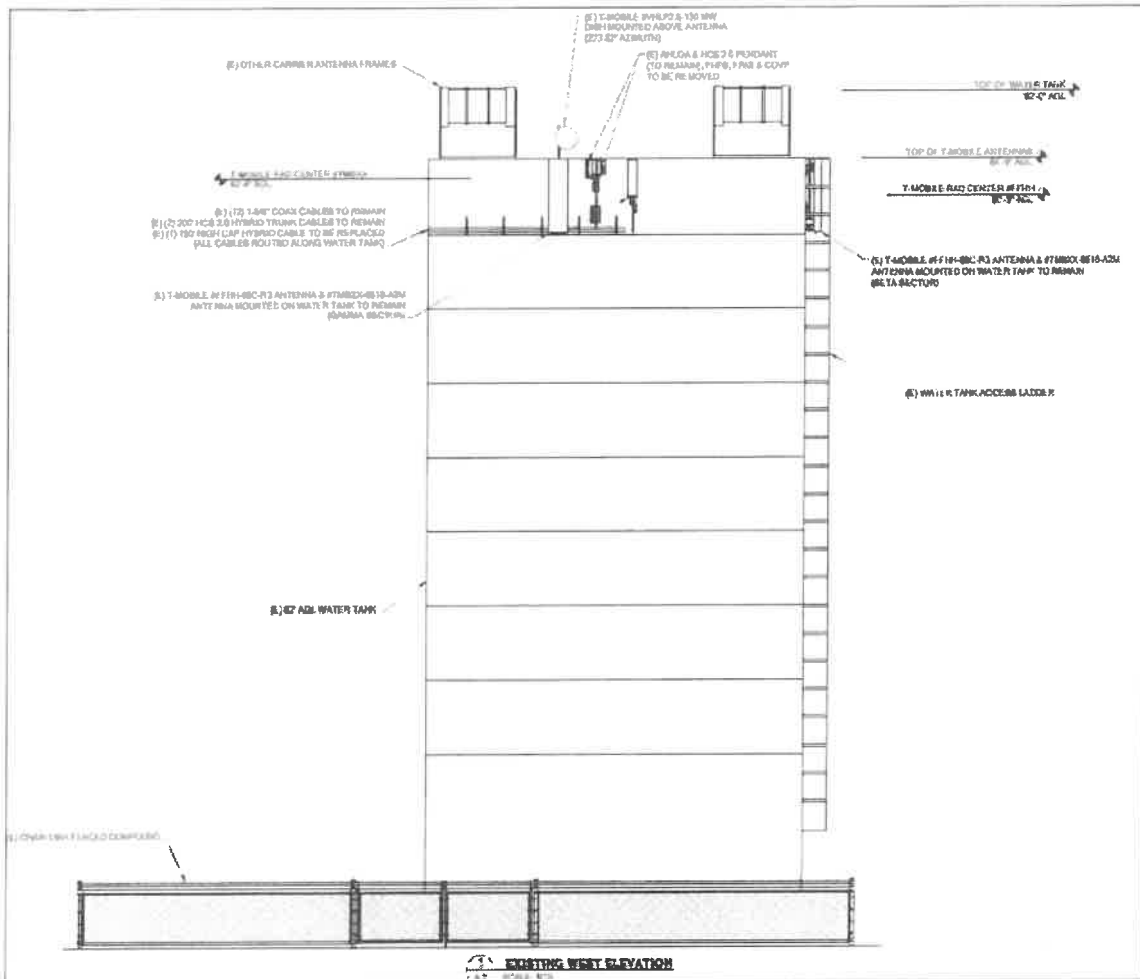
**EXHIBIT B-2**

**PREMISES AND  
DEPICTION OF LICENSEE'S FACILITIES AND EQUIPMENT  
PER PRIOR LEASE**



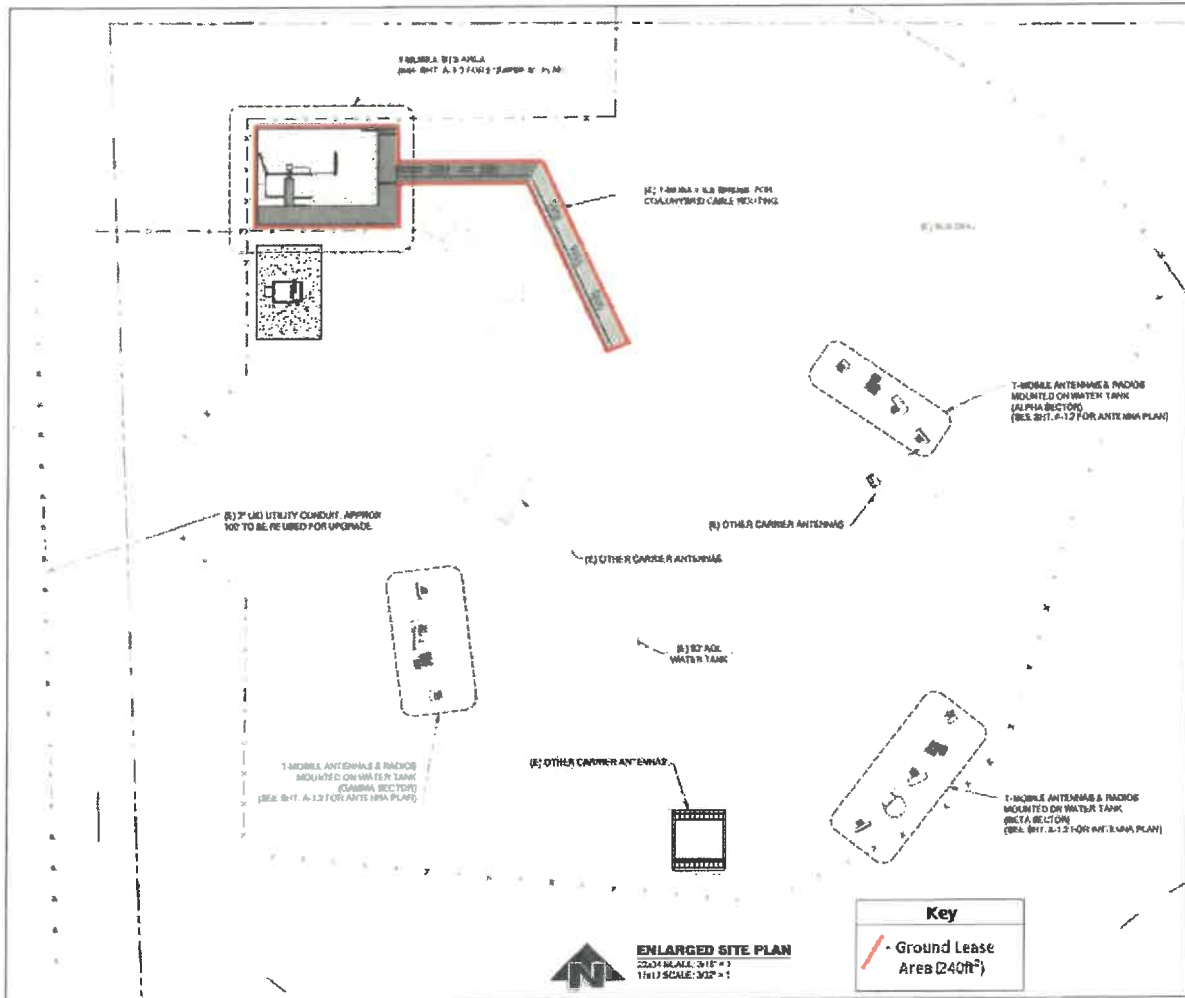
**EXHIBIT B-3**

**PREMISES AND  
DEPICTION OF LICENSEE'S FACILITIES AND EQUIPMENT  
PER PRIOR LEASE**



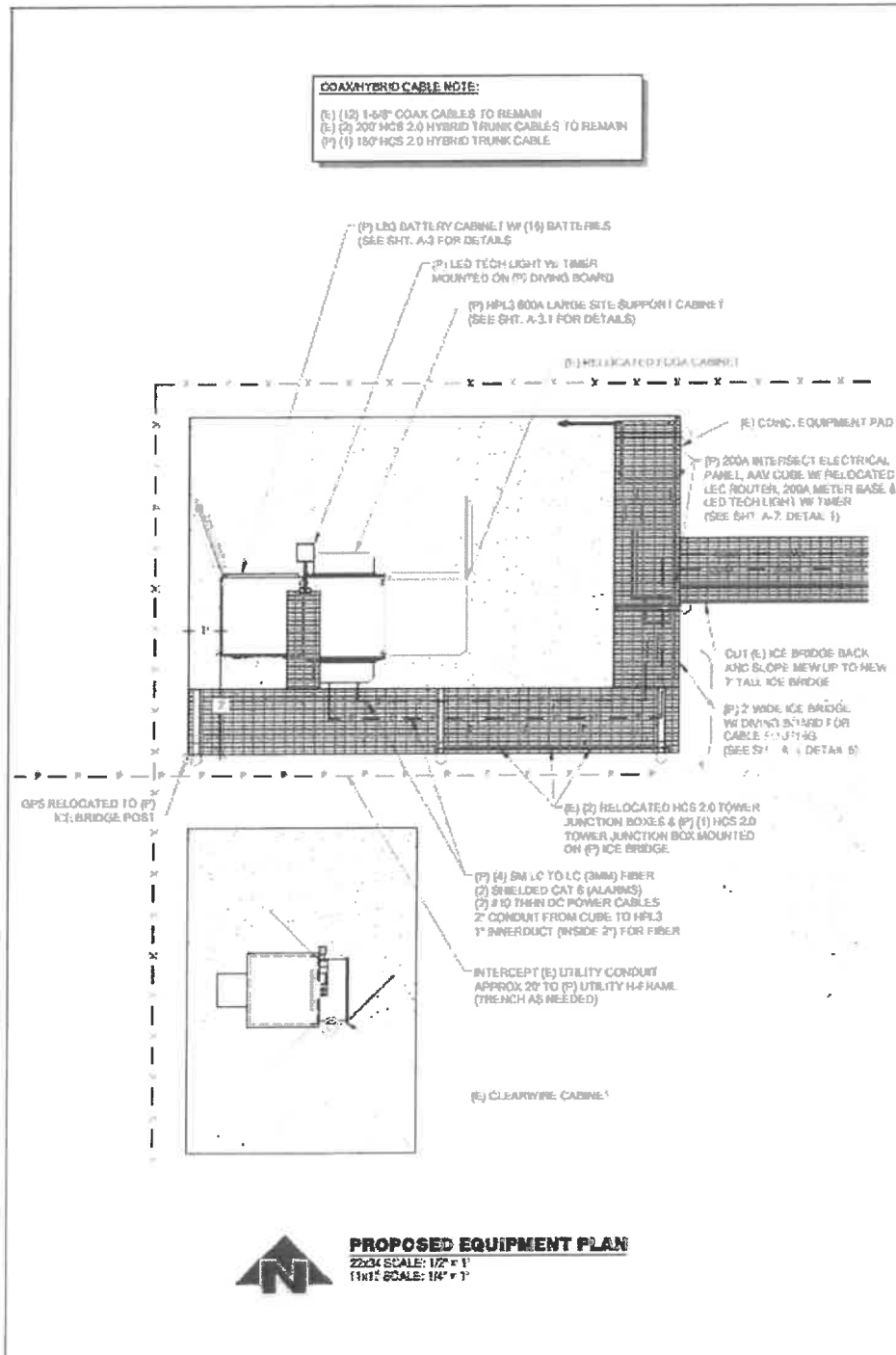
### EXHIBIT C-1

### DEPICTION OF PREMISES



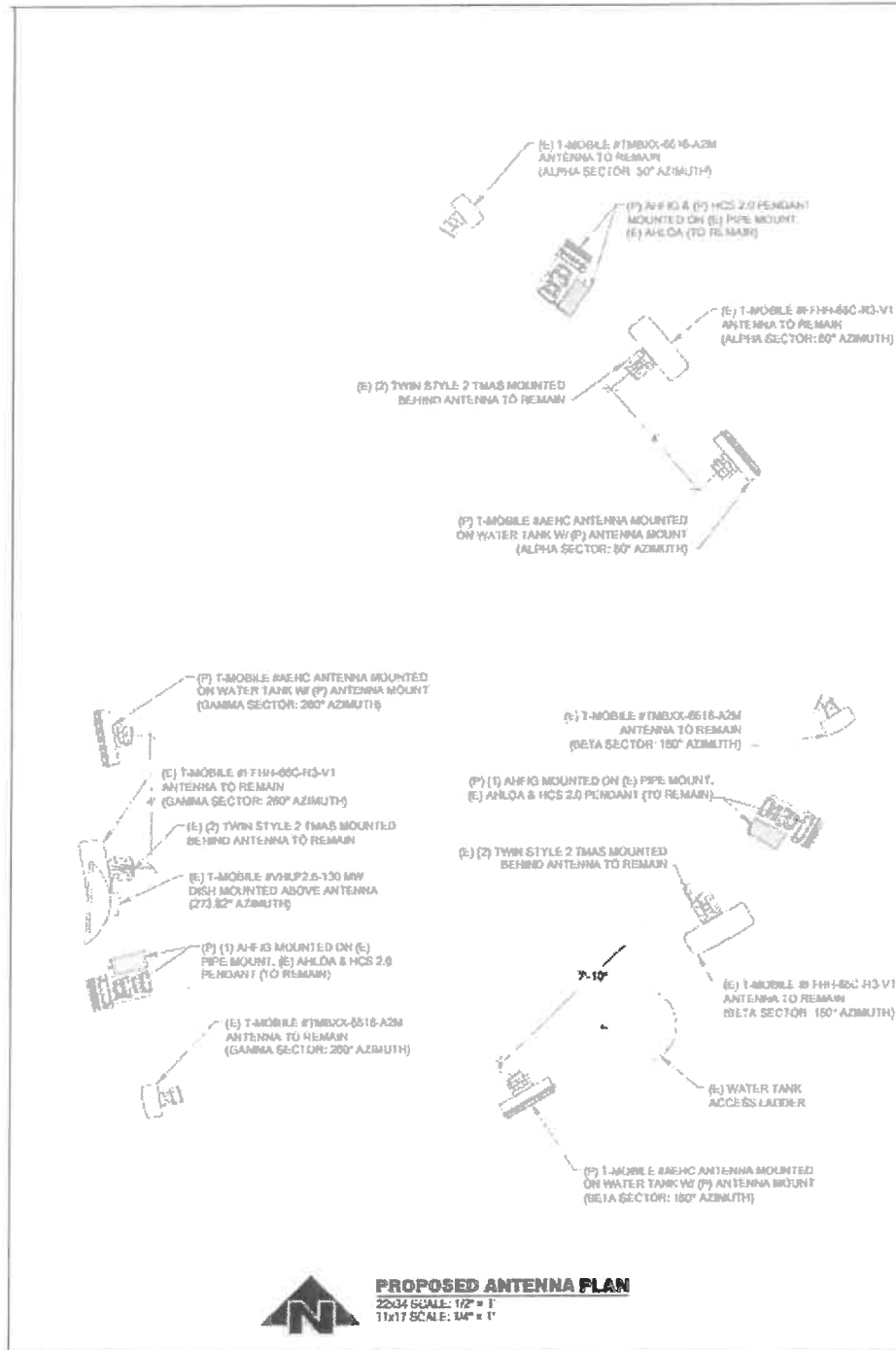
**EXHIBIT C-2**

**DEPICTION OF PREMISES.**



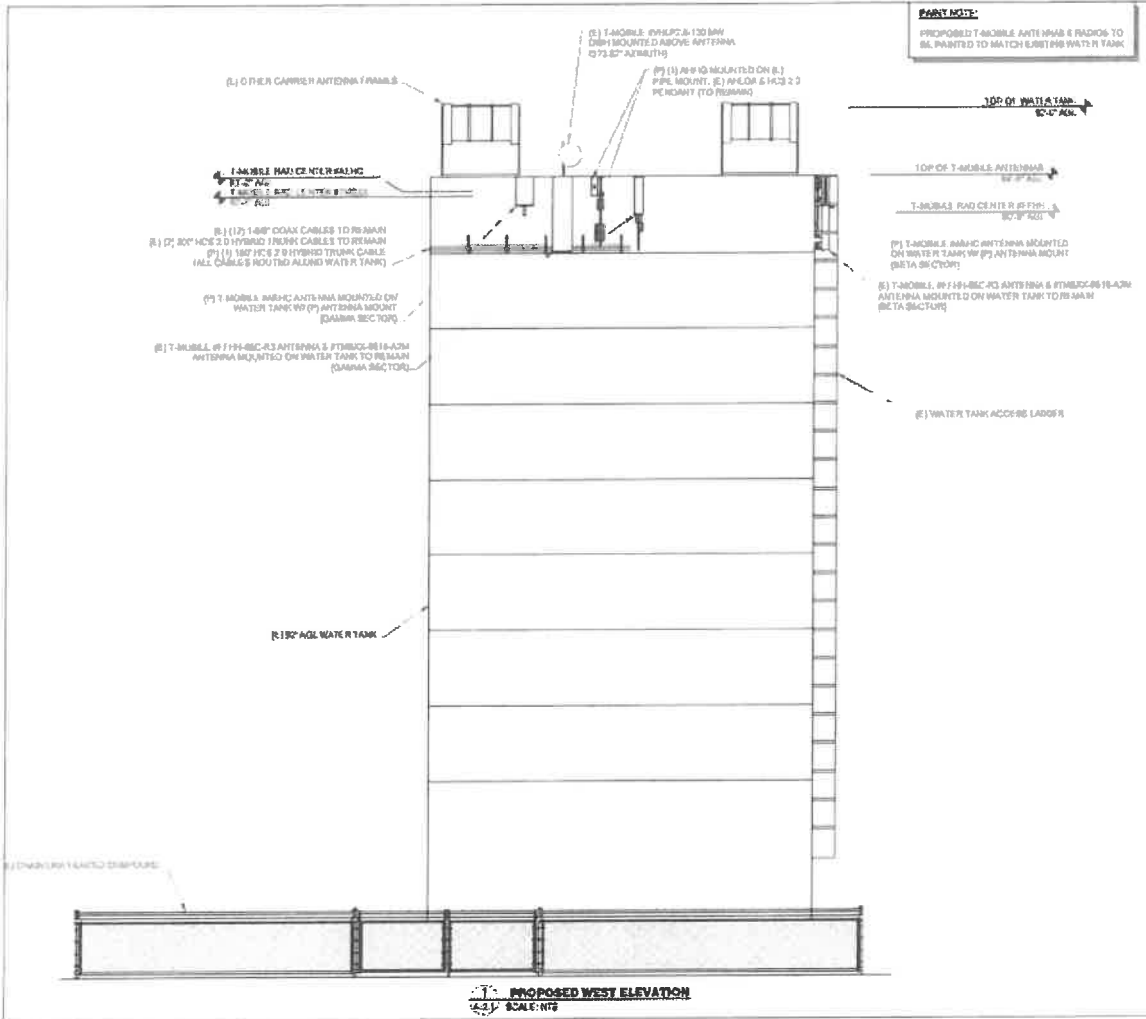
**EXHIBIT D-1**

**TOP OF TANK – DEPICTION OF LICENSE AREA**



**EXHIBIT D-2**

**TOP OF TANK – DEPICTION OF LICENSE AREA**



**EXHIBIT E**

**LICENSEE'S EQUIPMENT – IMPROVEMENTS/INVENTORY**

The authorized equipment under this Agreement shall be as depicted in the drawings attached as Exhibits C and D as follows:

1. Nine (9) Panel Antennas, three (3) of each of the following:
  - a. Model- AEHC
  - b. Model- FFHH-65C-R3-V1
  - c. Model- TMBXX-6516-A2M
  - d.
2. Six (6) Remote Radio Head/ Remote Radio Unit (RRH/RRU), three (3) of each of the following:
  - a. Model- AHLOA
  - b. Model- AHFIG
  - c.
3. Fifteen (15) cables as follows:
  - a. Two (2) 200' HCS Hybrid Trunk Cable
  - b. One (1) 150' HCS Hybrid Trunk Cable
  - c. Sixteen (16) 1-5/8" Coaxial Cables



**EXHIBIT F**

**INSURANCE COVERAGE REQUIREMENTS  
AND LIMITS**

**Commercial General Liability**

- \$3,000,000 per occurrence bodily injury and property injury\*  
[\* Such coverage amounts may be met by a combination of underlying and umbrella policies so long as in combination, the limits equal or exceed those stated.]
- \$6,000,000 annual aggregate
- Employees and volunteers as additional insureds
- Premises and operations
- Broad form property damage including underground, explosion and collapse hazard (XCU)
- Products completed operations
- Blanket contractual
- Subcontractors
- Personal injury with employee exclusion deleted
- Employers liability (Stop gap)

**Automobile Liability**

- \$2,000,000 per accident bodily injury and property damage liability, including any owned automobile
- Hired automobiles
- Non-owned automobile

**Workers' Compensation**

- Statutory requirements

**Agenda Item No.:** 5.2  
**Agenda Date:** 03/15/23  
**Reviewed By:** PH

Re: Authorize Communications Site Use and License Agreement with T-Mobile West, LLC  
North Hill Tank Site – 505 S 208<sup>th</sup> St, Des Moines, WA

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL					
<i>Expenditures?</i>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Budgeted?</i>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Amount: \$ <u>0.00</u>					

**ATTACHMENTS:**

1. Resolution 23-3-15B
2. Attachment – 1: Communications Site Use and License Agreement

**COMMENTS:**

The District owns certain real property located at 505 208TH St S, Des Moines, King County, Washington 98198 legally described in Attachment-1, Exhibit A attached (the "Property"), on which it operates reservoir and other related structures known as the North Hill Site.

The initial term of the Prior Lease was five (5) years, commencing on May 28, 1998 and terminating on May 27, 2003. The term of the Prior Lease was to automatically renew for four (4) additional terms of five (5) years each. Unless terminated by either Party, the term of the Prior Lease will expire on May 27, 2023.

RCW 57.08.120 contains the requirements the District must follow to lease real property which owns or has an interest in, property the District has a future need, and which is not immediately necessary for its purposes. A Public Hearing was held March 1, 2023, during a regularly scheduled, Highline Board Meeting. Public notices were published in the Kent Reporter on 2/10/23 and 2/17/23.

Commencing retroactively on May 28, 2022, the amount of Base Rent shall be Thirty-Two Thousand One Hundred and Thirty-Six Dollars and Seventy-Five Cents (\$32,136.75) per year. Commencing May 28, 2023, and on May 28 of each year during the Term thereafter (the "Adjustment Date") Base Rent shall be increased to an amount equal to One Hundred Three and One-Half Percent (103.5%) of the annual Base Rent immediately payable prior to said Adjustment Date.

Staff recommends approval of this resolution.