



Revised 10/12/15

**PIERCE TRANSIT BOARD MEETING**  
**Training Center, Rainier Room**  
**3720 96<sup>th</sup> Street SW, Lakewood, WA**  
**October 12, 2015, 4:00 PM**

**AGENDA**

**CALL TO ORDER**

**ROLL CALL**

**PRESENTATIONS**

- October 2015 Operator of the Month ~ Leo Randolph, Jr. Scott Gaines  
Transit Operator Assistant Manager
- October Employee(s) of the Month ~ Cherry Thomas, Senior Planner Paratransit Dena Withrow  
Transportation Manager
- Quarterly Excellence in Safety Award ~ Marvin Gilliam, Safety and Service Quality Administrator Jason Hovde  
Safety Officer

**PUBLIC COMMENT**

*(Citizens wishing to provide comment will be given three minutes to comment on any transit-related matters regardless of whether it is an agenda item or not.)*

**CONSENT AGENDA**

*(Items listed below were distributed to Commissioners in advance for reading and study and are enacted with one motion. Item(s) may be moved to the Action Agenda at the request of a Commissioner.)*

1. Approval of Vouchers, September 30, 2015
2. Minutes: Special Study Session and Regular Board Meeting of September 14, 2015
3. FS 15-058, A Resolution Authorizing the Execution of a Digital Orthophotography Partnership Agreement with Pierce County for Use of the County's Digital Orthophotography Services
4. FS 15-059, A Resolution Authorizing Execution of the Training Information & Resource Network (TRAIN) Consortium Fiscal Agent Agreement

## **ACTION AGENDA**

1. FS 15-063, A Resolution Authorizing the Following: (1) Amendment of Lease with PRC Tacoma-1, LLC, Until March 31, 2016; (2) Purchase of Communication Tower and Site Assets from PRC Tacoma – 1, LLC; and (3) Execute a Tower Site Lease Agreement with IWG Towers Assets, LLC, d/b/a InSite Wireless

Carlos Davis  
Radio Program Administrator

## **STAFF UPDATES/DISCUSSION**

- Gig Harbor Trolley Update & Washington State Fair Ridership Update

Van Sawin  
Business Development Officer

- Long Range Plan Update

Darin Stavish  
Principal Planner

- CEO Report

Sue Dreier  
Chief Executive Officer

## **INFORMATIONAL BOARD ITEM**

- Chair Report

Chair Rick Talbert

- Sound Transit Update

Commissioners McCarthy/ Strickland

- Commissioners' Comments

Board of Commissioners

## **EXECUTIVE SESSION**

## **ADJOURNMENT**

**PIERCE TRANSIT  
BOARD OF COMMISSIONERS  
SPECIAL STUDY SESSION  
MINUTES**

**September 14, 2015**

**CALL TO ORDER**

Chair Talbert called the meeting to order at 3:04 PM.

Commissioners present:

Don Anderson, City of Lakewood Mayor  
Daryl Eidinger, City of Edgewood Mayor (*representing Fife/Milton/Edgewood*)  
Nancy Henderson, Town of Steilacoom Councilmember  
(*representing Auburn/Gig Harbor/Fircrest/Pacific/Ruston/Steilacoom*)  
Pat McCarthy, Pierce County Executive (arrived at 3:18 PM)  
Rick Talbert, Chair of the Board, Pierce County Councilmember  
Steve Vermillion, Vice-Chair, City of Puyallup Councilmember  
Lauren Walker, City of Tacoma Councilmember

Commissioners excused:

Kent Keel, City of University Place Councilmember  
Marilyn Strickland, City of Tacoma Mayor

Staff present:

Sue Dreier, Chief Executive Officer  
Vivienne Kamphaus, Interim Chief Administration Officer  
Doug Middleton, Chief Operations Officer  
Dana Henderson, General Counsel  
Deanne Jacobson, Clerk of the Board  
Angela Woods, Deputy Clerk of the Board  
Trent Stephens, Deputy Chief of Transit Police (PCSD)

**Public Safety Model**

Chief Operations Officer Doug Middleton provided an overview about a proposal that would change the current structure of the Public Safety Department. Under this new structure, Pierce Transit would enter into interlocal agreements with local police departments to assist Pierce Transit with public safety instead of contracting with individual off-duty officers for these services. This new model will reduce Pierce Transit's liability and streamline contract management and tracking.

He discussed the current structure of the Public Safety Department and its successes at length.

Deputy Chief Trent Stephens responded to various questions relating to the type of crimes the Public Safety Department responds to, noting incidents such as crimes against property and smoking in non-smoking areas.

Mr. Middleton responded to questions about the factors that are attributing to the increase in costs of the new model and whether it would be cost effective for Pierce Transit to create its own public safety department, noting that it would be too expensive for Pierce Transit to have its own police department.

General Counsel Dana Henderson responded to questions relating to how the new model will improve accountability, noting that the local police departments will be responsible for monitoring and tracking their officers.

Upon inquiry, Mr. Middleton detailed the next steps, noting that the individual off-duty contracts end January 1, 2016, and the Board is anticipated to consider adoption of the interlocal agreements with the participating police departments by November of 2015.

Chair Talbert reported that the current model that has been in place for the last 10 years has served the community and Pierce Transit employees well. He understands the importance and need to have more accountability; however, he advocated for the importance of maintaining the same quality of service.

Chair Talbert also noted that our model should help prevent crime by educating riders about proper transit conduct on buses and facilities and prevent incidents from escalating into something more severe.

Mr. Middleton confirmed that our model includes a large prevention/education piece.

Upon inquiry about whether operators receive training on conflict resolution, Mr. Stephens confirmed that the Public Safety Department works with operators to give them skills to de-escalate situations in addition to tactical skills to protect them too.

Upon inquiry about whether the interlocal agreements will provide for dedicated personnel, Mr. Stephens noted that it is their hope that the current off-duty officers that provide transit support will be able to continue under the new agreements, but if there are new officers, they will receive training on the minimum standards expected of them in their role of public safety.

Chair Talbert suggested that during the development phase of the interlocal agreements with the local police departments that minimum standards be part of the discussion so that there is consistency in the workforce and less of a learning curve for new officers.

### **Public Comment**

Cinderella Helga, Lakewood, inquired about whether Pierce Transit has bus passes for individuals in emergency situations. Staff noted they will follow-up with Ms. Helga.

### **ADJOURNMENT**

Chair Talbert adjourned the meeting at 3:50 PM.

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Deanne Jacobson, CMC  
Clerk of the Board

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Rick Talbert, Chair  
Board of Commissioners

**PIERCE TRANSIT  
BOARD OF COMMISSIONERS  
MINUTES**

**September 14, 2015**

**CALL TO ORDER**

Chair Talbert called the meeting to order at 4:03 PM.

Commissioners present:

Don Anderson, City of Lakewood Mayor  
Daryl Eidinger, City of Edgewood Mayor (*representing Fife/Milton/Edgewood*)  
Nancy Henderson, Town of Steilacoom Councilmember  
(*representing Auburn/Gig Harbor/Fircrest/Pacific/Ruston/Steilacoom*)  
Kent Keel, City of University Place Councilmember  
Pat McCarthy, Pierce County Executive  
Marilyn Strickland, City of Tacoma Mayor (arrived at 4:07 PM)  
Rick Talbert, Chair of the Board, Pierce County Councilmember  
Steve Vermillion, Vice-Chair, City of Puyallup Councilmember  
Lauren Walker, City of Tacoma Councilmember

Commissioners excused:

None

Staff present:

Sue Dreier, Chief Executive Officer  
Vivienne Kamphaus, Interim Chief Administration Officer  
Doug Middleton, Chief Operations Officer  
Dana Henderson, General Counsel  
Deanne Jacobson, Clerk of the Board  
Angela Woods, Deputy Clerk of the Board

**Special Announcement**

Chief Executive Officer Sue Dreier introduced Rebecca Japhet, Pierce Transit's new Public Relations Officer, and detailed her experience and background.

Ms. Dreier also announced that Vivienne Kamphaus has been appointed the Acting Interim Chief Administration Officer and detailed her experience and background.

**PRESENTATIONS**

**Quarterly Financial Update**

CEO Sue Dreier presented on the September 2015 Financial Report (*Commissioner Strickland arrived at 4:07 PM*). Sales tax collections came in 7.6 % above June of 2014 due to the US Open. Sales tax collections appear to be on an upward swing and staff expects this to continue through the year.

## **Employee Recognition**

Interim Chief Administration Officer Vivienne Kamphaus honored Liz Passmore, Finance Assistant Manager, for receiving the Employee of the Month award for September 2015. She detailed her accomplishments and noted she has been employed with Pierce Transit for 32 years.

Service Planning Assistant Manager Peter Stackpole honored Max Henkle, Planner Analyst, for receiving the Efficiency and Effectiveness Award for September 2015. He detailed his experience and accomplishments.

## **PUBLIC COMMENT**

Chair Talbert provided instructions for public comments.

- Cinderella Helga, Lakewood, suggested that the front of the bus be lowered when she boards and de-boards a bus due to her disability. She requested that additional staff be added at the Tacoma Dome Station Bus Shop to assist with bus passes, particularly from 11:00 am – 1:00 pm; lines too long.

She questioned the SHUTTLE evaluation process for individuals with obvious disabilities.

- Tammy Cox, Lakewood, reported on various situations that occurred on the bus and other Pierce Transit facilities relating to passenger etiquette and conduct. She requested that a bus shop be opened in the Lakewood Town Center to assist with the sale of bus passes. The bus shelters need lighting and some work. Bus times need to be lengthened.
- Wilma Degalso (phonetic), Lakewood, noted the bus drivers have been really friendly and on time.

## **CONSENT AGENDA**

*(Items listed below were distributed to Commissioners in advance for reading and study and are enacted with one motion.)*

Commissioner Henderson requested that Item No. 3 of the Consent Agenda be moved to the Action Agenda.

Commissioners Henderson and Vermillion **moved** and seconded to approve the consent agenda as amended.

Motion **carried**, 9-0.

1. Approval of September 1, 2015 Vouchers  
Operating Fund #10  
Self-Insurance Fund #40  
Capital Fund #90  
Voucher Numbers CK 344627 through CK 341422  
Wire Numbers 1037 through 1045  
Total \$5,447,191.32
2. Minutes: Special Study Session Meeting of June 8, 2015; Regular Board Meeting of August 10, 2015
3. ~~FS 15 052, Approved Resolution No. 15 046, adopting the Agency's 2015-2020 Transit Development Plan as presented in Exhibit A. Moved to the Action Agenda.~~

4. FS 15-053, approved Resolution No. 15-053 (*Resolution renumbered from 15-047 to 15-053*), authorizing the Chief Executive Officer to enter into and execute a five-year, sole source, Maintenance and Support Agreement for Pierce Transit's CAD/AVL System with Xerox Transportation Solutions, Inc., for an amount not to exceed \$2,006,550.
5. FS 15-054, approved Resolution No. 15-048, adopting revisions and amendments to Pierce Transit Code Section 3.32 - Investment Policy as presented in Exhibit A, adopting a new revised investment policy, and superseding Resolution Nos. 84-110, 90-085, 92-133 and 02-006.

## **ACTION AGENDA**

1. FS 15-055, A Resolution Approving the Transit Service Monitoring Results Contained Within the 2015 Title VI Program Submittal to the Federal Transit Administration; and
2. FS 15-056, A Resolution Approving the 2015 Title VI Program Submittal to the Federal Transit Administration.

Commissioners Vermillion and Walker **moved** and seconded to approve Resolution No. 15-049, approving the 2015 Title VI Transit Service Monitoring Results Submittal to the Federal Transit Administration in substantially the same form as Exhibit A; and approve Resolution No. 15-050, approving the 2015 Title VI Program Submittal to the Federal Transit Administration in substantially the same form as Exhibit A.

Senior Planner Janine Robinson and Planner Analyst Max Henkle presented on the Title VI Program Submittal and Monitoring Results. They reviewed performance standards and demographic data that showed how Pierce Transit serves minority and low income populations in comparison to non-minority and non-low income populations/routes.

The Monitoring Results and Title VI Program Submittal are required by the Federal Transit Administration.

Motion **carried**, 9-0.

3. FS 15-057, A Resolution Authorizing Amendment of the 2015 Operating Budget to Increase Five Transit Operator Positions and One Relief Transit Operator Position for the Operation of Sound Transit Route 580 and Service Increases to Sound Transit Routes 567, 577, 586 and 598.

Chief Operations Officer Doug Middleton explained that additional positions are needed to support Sound Transit Routes 580, 567, 577, 586 and 598 and the costs associated with the hiring of these additional positions will be reconciled and reimbursed by Sound Transit, which equates to approximately 10,000 service hours.

Commissioners Anderson and McCarthy **moved** and seconded to approve Resolution No. 15-051, amending the 2015 Operating Budget to increase five (5) transit operator positions and one (1) relief operator position for the operation of Sound Transit Route 580 and other additional service hour increases to Sound Transit Routes 567, 577, 586 and 598.

Motion **carried**, 9-0.

4. FS 15-052, A Resolution Adopting the 2015-2020 Transit Development Plan (*Resolution renumbered from 15-046 to 15-052*)

Commissioners Anderson and McCarthy **moved** and seconded to approve Resolution No. 15-052, adopting the Agency's 2015-2020 Transit Development Plan as presented in Exhibit A.

Principal Planner Darin Stavish presented on the item.

Staff responded to various questions presented by Commissioner Henderson relating to the following items:

- Decline in Gig Harbor Trolley ridership since its inaugural season;
- Communication between the Board and the Community Transportation Advisory Group (CTAG); and
- The effect of an "Adopt a Stop" bus shelter program would have on overall satisfaction and cleanliness at bus stops.

Staff noted they would follow up with Commissioner Henderson's questions relating to ORCA passport accounts, diversification of Pierce Transit's fleet, i.e., replacing CNG-burning buses with hybrid (diesel-electric) vehicles; and general question relating to operating income.

Chair Talbert recommended that staff organize a study session meeting between the Board and CTAG in the near future.

Motion **carried**, 9-0.

## **STAFF UPDATES/DISCUSSION**

### **Real Estate Update**

Senior Planner Janine Robinson provided a status update on the following projects:

- Property located at South Tacoma Way and 96th St, also known as the Cosmos property
- 72<sup>nd</sup> and Portland Transit Center (proposal for Veteran's housing)
- Commerce Street Turn Around facility
- Dome District Agreement

Commissioner Anderson raised concerns about the source of funding for the 72<sup>nd</sup> and Portland Transit Center, where would the capital come from to fund the program and is the funding sustainable.

Staff noted they will perform due diligence before advocating approval and will keep the Board informed about the details as staff becomes aware of them.

Commissioner Strickland noted that as the Mayor of Tacoma she has accepted the challenge to end Veteran homelessness so any development will be fully vetted by the City of Tacoma with regards to financial sustainability.



## **CEO Report**

Chief Executive Officer Sue Dreier reported the following information:

- Service to the Washington State Fair has been a success and appears to be well received. Kudos to the Marketing Department for their work on the signage and buses.
- American Public Transportation Association (APTA) awarded Pierce Transit first place in the AdWheel Competition (a marketing competition) for the development of the Financial Report Card that the Board receives each month. This qualifies Pierce Transit for a grand prize win and the award will be presented to Pierce Transit at the APTA Conference in October of 2015.
- The Board will receive electronically the results of the Triennial Review from the Federal Transit Administration. She briefly discussed the results and noted that Pierce Transit has corrected most of the issues.
- The All Employee meeting was held on September 9, 2015; over 230 employees attended.
- Transit Team Appreciation Day was a success. She thanked Commissioner Vermillion for attending and helping with breakfast.
- The APTA peer review kicks off tomorrow that addresses the structural and operational aspects of the Agency.
- Ms. Dreier will be heading to Washington, DC to meet with lobbyist, congressional house and senate representatives, and the FTA.

## **INFORMATIONAL BOARD ITEM**

### **Chair Report**

Chair Talbert announced that the September 17, 2015, Executive Finance Committee Meeting has been cancelled due to lack of agenda items. The next regularly scheduled meeting is October 15, 2015.

### **Sound Transit Update**

Commissioner Strickland announced that the Sound Transit Link expansion through Tacoma project received a \$2 million federal grant to promote transit oriented development. The money will be used for pedestrian mobility, curb cuts and beautification.

Chief Executive Officer Joni Earl is retiring and Sound Transit is in the process of conducting a national search for her replacement.

### **Commissioners' Comments**

None.

## **EXECUTIVE SESSION**

None.

## **ADJOURNMENT**

Chair Talbert adjourned the meeting at 5:08 PM.

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Deanne Jacobson, CMC  
Clerk of the Board

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Rick Talbert, Chair  
Board of Commissioners

## FACT SHEET

**TITLE:** A Resolution Authorizing the Execution of a Multi-Year Digital Orthophotography Partnership Agreement With Pierce County for Use of the County's Digital Orthophotography Services

**DIVISION:** Administration/Information Technology

**ORIGINATOR:** Keith Messner, Information Technology Manager

**PRECEDING ACTION:** Resolution No. 14-067, Adoption of the 2015 Budget

**COORDINATING DEPARTMENT:** Information Technology

**APPROVED FOR SUBMITTAL:**

\_\_\_\_\_  
Chief Financial Officer

**APPROVED FOR AGENDA:**

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
General Counsel

**ATTACHMENTS:**

Proposed Resolution  
Exhibit A, Proposed

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### BUDGET INFORMATION

2015 Budget Amount  
\$1,094

Required Expenditure  
\$4,376

Impact  
None

**Explanation:** The current Digital Orthophotography partnership agreement with Pierce County has expired. The new partnership agreement covers the use of this service for 2015 and the next three years. Funds for 2015 were budgeted in the current IT M&O budget, and Years 2016 through 2018 fees will be budgeted in the 2016, 2017, 2018 M&O budgets respectively. The total 4-year value of the agreement is \$4,376 (including tax).

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### BACKGROUND:

The proposed resolution requests authority to execute a four-year agreement with Pierce County for use of the County's Digital Orthophotography Service. Digital Orthophotography is a series of aerial digital photographs overlaid on a geographic map - this is very similar to the "satellite" view when using Google or Bing maps. The County has created a Digital Orthophotography layer that works in conjunction with the CountyView Service so users of the service can take advantage of the actual geographical images along with all the other CountyView overlays (i.e. railroads, roads, property lines, easements, etc.).

FACT SHEET  
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Pierce Transit's Service Planning has a single user license for this service, and uses digital orthophotography in conjunction with Pierce County's CountyView Service to assist in managing our Bus Stop Program.

Pierce Transit has been using this Pierce County provided service for the past 12 years, and has found it a very effective tool to assist in our planning efforts.

Pierce County is the proprietary vendor for this service and is the only vendor that can provide support for it. Staff conducted a price comparison with other users and has found that the price proposed for this service is fair and reasonable.

ALTERNATIVES:

The alternative would be to contract with a vendor to take customized high altitude photos of the entire County and create a Digital Orthophotography overlay and pay to have it incorporated with our Geographic Information System. This would be a very costly approach versus taking advantage of the service provided by Pierce County.

RECOMMENDATION:

Approve Resolution No. 15-054, authorizing the Chief Executive Officer to enter into and execute a four-year Partnership Agreement with Pierce County for use of the County's Digital Orthophotography Service.

**RESOLUTION NO. 15-054**

A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing Execution of the Digital Orthophotography Partnership Agreement With Pierce County for Use of the County's Digital Orthophotography Services

WHEREAS, The County's Digital Orthophotography Service provides an aerial photographic layer placed over the County's geographic map to provide a "satellite" view of the map that can be used with all the other map layers available (i.e. railroads, roads, property lines, easements etc.).

WHEREAS, the 2015 budget contains funds to execute a partnership agreement for use of the County's Digital Orthophotography Service; and

WHEREAS, the current partnership agreement has expired; and

WHEREAS, an ongoing partnership agreement is needed to continue using the Digital Orthophotography Service; and

WHEREAS, the Digital Orthophotography Service is used by Pierce Transit's Service Planning Department to assist in planning and managing the Pierce Transit Bus Stop Program; and

WHEREAS, Pierce Transit has been using the County's Digital Orthophotography Service for the past 12 years and has found it a very effective tool to assist in our planning efforts; and

WHEREAS, Pierce County's partnership agreement will provide Orthophotography Services for four years in the amount of \$1,094 in 2015, \$1,094 in 2016, \$1,094 in 2017, and \$1,094 in 2018; and

WHEREAS, the proposed agreement has been evaluated by staff, is considered to be fair and reasonable; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit do hereby as follows:

Section 1. The Chief Executive Officer is hereby authorized to enter into and execute an interlocal agreement with Pierce County in the amounts of \$1,094 in 2015, \$1,094 in 2016, \$1,094 in 2017, and \$1,094 in 2018 for use of the County's Digital Orthophotography Service in substantially the same form as Exhibit A.

ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the 12<sup>th</sup> day of October, 2015.

PIERCE TRANSIT

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Rick Talbert, Chair

Board of Commissioners

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ATTEST/AUTHENTICATED

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Deanne Jacobson, CMC  
Clerk of the Board

## DIGITAL ORTHOPHOTOGRAPHY PARTNERSHIP AGREEMENT

**Agreement # CC-100056  
between  
Pierce County  
And  
Pierce Transit**

Pierce Transit, hereinafter called **Partner**, and Pierce County, hereinafter called **COUNTY**, agree to the terms of this Digital Orthophotography Partnership Agreement.

**WHEREAS** the **County** conducts an orthophotography (orthophoto) construction program to develop a high resolution digital orthophotography database and makes this digital data available for use in the Digital Orthophotography Program;

**WHEREAS** the **Partner** needs digital orthophotography for viewing, mapping and analysis and wishes to opt in to the **County's** Digital Orthophotography Program;

**NOW, THEREFORE**, the **Partner** and **County** agree to the following responsibilities and terms of the Digital Orthophotography Partnership agreement effective this 1st Day of January, 2015.

It is agreed by the parties:

**Product**

1. **County** will establish the orthophotography specifications and requirements for 1"=100" mapping.
  - 1.1. Imagery is a 1"=800' color photo, pixel size of 0.5 ft, free of cloud cover, and artifacts that obscure physical features.
  - 1.2. Every effort is made to utilize the best available terrain model and maintain the horizontal positional alignment of the dataset as compared to the 1998 county orthophotos. This will benefit **Partners** who have constructed datasets on top of the orthophotos.
2. **County** will conduct and manage the timely competitive bid, selection, procurement, development, quality control of the Pierce County orthophotography dataset.
3. **Partner** will determine what geographic area of the orthophoto database the Partner will opt to use.
4. Orthophotography Partnership program provides to the **Partner**:
  - 4.1. Orthophoto coverage area defined by: **COUNTY**
  - 4.2. Orthophotography for the year(s): **prior to and including 2018**
  - 4.3. Other related data sets: ortho-based contours, lidar contours, and full countywide ortho access.
5. Updates to the orthophotography database will be no less than every four years. The frequency of the update is determined by the **County** following consideration of **Partner** concerns, budget issues and any other pertinent factors that may affect the quality or cost of the orthophoto database.

6. Other **County** products, services or data sets are not a part of this agreement.

### **Product Use**

7. **Partner** will have access to the orthophotography for viewing, mapping and analysis available in the on-line **County's** GIS applications.
8. The **County** licenses the orthophotos from the orthophoto vendor. Access by the **Partner** to the digital orthophotos and associated data is subject to and governed by this agreement, including the following licensing terms:
- 8.1. The **Partner** shall use the orthophoto data for internal business purposes only.
  - 8.2. The **Partner** may make hardcopy maps of orthophotos (and with other data overlays) for internal or public distribution.
  - 8.3. The **Partner** selecting the maximum user option may copy portions of the orthophoto database to other internal company servers for use with Autocad or other mapping software upon written approval from **County**.
  - 8.4. The **Partner** selecting the maximum user option can request the **County** to make a copy of the orthophotos and provide this data to consultants or engineers who are performing work under contract for a specific **Partner** project. Consultants or contractors must adhere to the terms in this agreement and pay the \$80/hr to copy the dataset onto CD or DVD.
  - 8.5. The **Partner** may not post the orthophotos to any web site.
9. The **Partner** may not distribute or permit the distribution of the orthophoto database/files in any digital format to other agencies, the public or third parties. Violation of this restriction will result in a) the **Partner** returning the orthophotography to the **County** thus ceasing use of the product, b) if using online **County** GIS application services, orthophoto access will be discontinued or c) the **County** may also seek legal redress.
10. If the **Partner** uses **County** GIS on-line application services, the **Partner's** GIS users will be provided access to the orthophotography through the on-line application services in CountyView. If the **Partner** does not have on-line access to the **County** GIS, the **Partner** selecting the maximum user option will provide a hard disk to copy the dataset for transfer.
11. The **Partner** has a perpetual agreement to use the orthophotography as defined in this document unless terminated for cause (section 8) or non-payment of agreement fees.
12. **Partner's** rights under this agreement are nonassignable, nontransferable, nonsublicensable and nonexclusive.
13. **Partner** accepts that a limited (larger pixel scale) public domain product may be produced with each acquisition and released with a 6 month schedule delay. This product is for the USGS and National Map program and will be provided only when the USGS contributes funding to the orthophotography program.

### **Product Fees and Term**

14. The **Partner** will pay agreement fees for the development and maintenance of the orthophotography.
- Yearly agreement fees for the **countywide** dataset:  
Annual maintenance fee is: \$1,000 per user per year up to a maximum of \$7,500 per year.



15. After the initial contract term, as agreed to in item# 19, the fees will be adjusted based on the number of Partners and the cost of the products provided in the program. The **County** will notify **Partners** of changes to the agreement fees.
16. Non-Appropriations (applies to Governmental Agencies only)
  - 16.1. **Partner** intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each fiscal period during the term of this Agreement: 1) **Partner** agrees to include in its budget request appropriations sufficient to cover **Partner's** obligations under this Agreement and 2) **Partner** agrees to use all reasonable and lawful means to secure these appropriations.
  - 16.2. In the event that **Partner** is appropriated insufficient funds, by appropriation, appropriation limitation or grant, to continue payments under this Agreement and has no other funding source lawfully available to it for such purpose, **Partner** may terminate this Agreement by giving **County** at least two weeks' written notice to terminate as of December 31st of the then current calendar year. Upon termination and to the extent of lawfully available funds, **Partner** shall remit all amounts due through the date of termination.
17. The **Partner** may opt out of the **County** Orthophotography Program by giving **County** at least two weeks' written notice to terminate as of December 31st of the then current calendar year. Fees are not refundable.
18. In the event the **Partner** chooses to opt out of the orthophotography program, the **Partner** will return the orthophotography to the **County** and discontinue use of the data.
19. The contract period shall be from January 1, 2015 to December 31, 2018. The Contract shall be renewable for one (1) additional three (3) year term, unless either party gives notice of non-renewal not less than 60 days prior to the expiration of the next term.

#### **Limitations**

20. The **County** makes no warranty, expressed or implied, concerning the orthophotography's content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. ALL DATA IS EXPRESSLY PROVIDED "AS IS" AND "WITH ALL FAULTS". The **County** makes no warranty of fitness for a particular purpose, and no representation as to the quality of any data. **Partner** users of data are responsible for ensuring the accuracy, currency and other qualities of all products (including maps, reports, displays and analysis) produced from or in connection with **County's** orthophotography.

#### **Spatial Accuracy**

21. Orthophotography can be plotted or represented at various scales other than the original source of the data. The **Partner** is responsible for adhering to industry standard mapping practices which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets.

#### **No County Liability**

22. **County** shall not be liable to the **Partner** (or transferees or vendees of **Partner**) or others for damages of any kind, including lost profits, lost savings or any other incidental or consequential damages relating to the providing of the orthophotography or the use of it. The **Partner** and any others shall have no remedy at law or equity against the **County** in case the orthophotography provided is inaccurate, incomplete or otherwise defective in any way.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2015.

**PARTNER:**

Sue Dreier

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature Date

CEO

\_\_\_\_\_  
Title of Signatory

**Mailing Address:**

3701 96th St. SW

\_\_\_\_\_  
Lakewood, WA 98496-0070

**Street Address, (if different):**

\_\_\_\_\_

\_\_\_\_\_

Contact Name: Keith Messner

Contact Phone: 253.581.8122

Contact Email: kmessner@piercetransit.org

**PIERCE COUNTY:**

\_\_\_\_\_  
Deputy Prosecuting Attorney Date  
(Approved as to legal form only)

**Recommended:**

\_\_\_\_\_  
Budget and Finance Date

**Approved:**

\_\_\_\_\_  
Department Director Date  
(less than \$250,000)

**or**

\_\_\_\_\_  
Pierce County Executive Date  
(\$250,000 or more)

## FACT SHEET

**TITLE:** A Resolution Authorizing Execution of a Fiscal Agent Agreement with Training Information and Resource Network (TRAIN) Consortium to Acknowledge the Shifting of Fiscal Stewardship from Tacoma Community College to Pierce County

**DIVISION:** Administration

**ORIGINATOR:** Chris Saffer, Training & Development Manager

**PRECEDING ACTION:** None.

**COORDINATING DEPARTMENT:** Administration

**APPROVED FOR SUBMITTAL:**

\_\_\_\_\_  
Chief Financial Officer

**APPROVED FOR AGENDA:**

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
General Counsel

**ATTACHMENTS:**

Proposed Resolution  
Exhibit A, Proposed Fiscal Agent Agreement

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### BUDGET INFORMATION

2015 Budget Amount  
\$0

Required Expenditure  
\$0

Impact

**Explanation:** There is no budget impact.

### BACKGROUND:

Since 1999, Pierce Transit has been a member of the Training Information & Resource Network (TRAIN), a consortium of local, state and federal governmental agencies that have partnered together to share training resources and sponsor conferences and special training events. The TRAIN consortium has been operating since 1999 and has sponsored training conferences for the past 12 years. Conferences have been targeted to audiences of administrative support staff, field staff, executives and management and supervisors. Pierce Transit actively participates in the TRAIN Consortium and staff attends regular monthly meetings and co-sponsor conference events.

The proposed fiscal agent agreement shifts the fiscal agent responsibility for the TRAIN Consortium from Tacoma Community College to Pierce County and identifies the fiscal agent's and member agencies' responsibilities. The proposed agreement relates to the TRAIN consortium's policies and procedures for the overall program. As a member agency, Pierce Transit considers this amendment to the agreement a

housekeeping item as any changes to the agreement must be acknowledged by all members who are actively participating in the TRAIN consortium.

ALTERNATIVES:

None.

RECOMMENDATION:

Approve Resolution No. 15-055, authorizing the Chief Executive Officer to enter into and execute a Fiscal Agent Agreement with Training Information and Resource Network (TRAIN) Consortium to acknowledge the shifting of fiscal stewardship from Tacoma Community College to Pierce County.

**RESOLUTION NO. 15-055**

A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing Execution of a Fiscal Agent Agreement With Training Information and Resource Network (TRAIN) Consortium to Acknowledge the Shifting of Fiscal Stewardship from Tacoma Community College to Pierce County

Whereas Pierce Transit has been a member agent of the TRAIN Consortium since 1999; and

Whereas Pierce Transit values the training resource benefits the TRAIN consortium provides; and

Whereas, Pierce Transit, as a member agency of TRAIN, has reviewed and acknowledged the terms of the Fiscal Agent contract as described in Exhibit A; and

WHEREAS, Pierce Transit acknowledges that TRAIN is shifting the fiscal stewardship from Tacoma Community College to Pierce County; and

WHEREAS, acceptance of the terms is a requirement of member agencies in order to participate in the TRAIN consortium; and

NOW THEREFORE, BE IT RESOLVED, the Board of Commissioners of Pierce Transit do hereby as follows:

Section 1. Authorize the Chief Executive Officer to enter into and execute the Fiscal Agent Agreement with TRAIN consortium in substantially the same form as Exhibit A, attached hereto.

Adopted by the Board of Commissioners of Pierce Transit as their regular meeting thereof held on the 12<sup>th</sup> day of October, 2015.

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Rick Talbert, Chair  
Board of Commissioners

ATTEST/AUTHENTICATED

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Deanne Jacobson, CMC  
Clerk of the Board

## **Training Information and Resource Network (TRAIN) Consortium Fiscal Agent Agreement**

### **Scope of Services**

The following serves as a working agreement between the Training Resource And Information Network (TRAIN) consortium Member Agencies and Pierce County.

As the fiscal agent for TRAIN workshops, conferences and events, **Pierce County will:**

- Maintain a dedicated program budget which will provide a fiscal operating reserve for TRAIN sponsored trainings, conferences and workshops.
- Receive and disburse payments associated with designated TRAIN sponsored events.
- If needed, hire and supervise an Conference Coordinator, on a temporary basis, to assist with administrative tasks related to consortium events.
- Maintain all financial records of TRAIN-related revenue and expenses (including payroll) and provide a quarterly written report including current account balance to TRAIN member agencies.
- Notify TRAIN member agencies of any changes in procedures, regulations, contracts or personnel that would affect delivery of services. Provide a single point of contact in the County to work with member agency coordinators.
- Participate in scheduled TRAIN member agency meetings and be available to answer questions regarding the quarterly budget report.
- Initiate and administer contracts and pay for services from TRAIN funds including but not limited to the following expenses related to TRAIN events:
  - facilities rental
  - speakers and consultants, fees, lodging, transportation, mileage, materials and meals
  - web-hosting
  - food and beverages
  - books and materials including bags and other promotional items
  - printed materials
  - online registration for events
  - event marketing and promotion
  - receive reimbursement for Conference Coordinator expenses (payroll, mileage, materials) on an annual basis through a transfer of funds to Pierce County.
- Charge a 5% service fee on all transactions in the dedicated TRAIN account for fiscal management services. Transfer of service fee funds to Pierce County will occur annually after close of each fiscal year.

**The TRAIN member agencies sponsoring an event will:**

- Provide a single point of contact for Pierce County regarding this fiscal agreement and billing.
- Develop and coordinate learning events and design marketing and registration materials.
- If a web page for the TRAIN consortium is utilized, fund and provide services to design and maintain the TRAIN web page.
- Provide written authorization, where needed, for Pierce County to initiate contracts, agreements, and make purchases on behalf of other sponsoring agencies.
- Provide necessary information to process contracts and agreements in a timely manner that is in compliance with state and county guidelines.
- Notify Pierce County of any changes in procedures or personnel that would impact this agreement.

Duration of Agreement: This agreement will be ongoing and will be reviewed once a year to assess the working relationship between the partners and make any necessary adjustments to this document.

Termination of Agreement: This agreement may be terminated by Pierce County or a TRAIN sponsoring agency by giving at least 90 days notice to the other parties of its intent to terminate the relationship. All parties shall remain responsible for their obligations under this agreement and any related agreements until the termination date and shall assist and cooperate with any transition and/or closure activities. In the event of such termination, any operating fund balances shall, at the direction of the TRAIN sponsoring members, either be (1) transferred to a new designated fiscal agent immediately upon the effective date of termination of the agreement or (2) distributed equally among those agencies who participated as co-sponsors for the most recent TRAIN conference prior to termination of this agreement.

Organization's Name  
Address  
EIN:

**Contract # 60097/TRAIN 08**

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Authorized signator for agency

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Date

---

to be identified by agency (as to form only)

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Date

---

Printed name/Title

Notification provided to:

Name:

Address:

**Telephone:**

**Fax:**

**E-mail:**



## FACT SHEET

**TITLE:** A Resolution Authorizing the Following: (1) Amendment of Lease with PRC Tacoma – 1, LLC, Until March 31, 2016; (2) Purchase of Communication Tower and Site Assets from PRC Tacoma – I LLC; and (3) Execute a Tower Site Lease Agreement with IWG Towers Assets I, LLC, d/b/a InSite Wireless

**DIVISION:** Operations

**ORIGINATOR:** Carlos Davis, Radio Program Administrator

**PRECEDING ACTION:**

**Resolution No. 06-004**, Authority to Negotiate and Execute a Master Agreement for the Mobile Communications System, Task Order No. 1 for Voice and Data Radio and Task Order No. 2 for CAD/AVL with Motorola and Amendment of the 2006 Capital Budget

**Resolution No. 10-024**, Authority to Amend the 2010 Operating Budget and Execution of Sole Source Purchases of Radio/CAD/AVL Equipment with Motorola and ACS for Installation on Sound Transit Coaches

**Resolution No. 11-004**, Authority to execute an Interlocal Agreement with Pierce County for the Operations of a Combined Communications Network

**Resolution No. 14-053**, Authority to Purchase Radio Communications Equipment from Motorola Solutions, Inc., and Aviat Networks to Upgrade the UHF Data Communication Network

**Resolution No. 14-074**, Authority to execute an Interlocal Agreement with Pierce County for the Creation, Operation, Sustainment and Governance of a Combined Communication Network

**COORDINATING DEPARTMENT:** Radio Communications

**APPROVED FOR SUBMITTAL:**

\_\_\_\_\_  
Chief Financial Officer

**APPROVED FOR AGENDA:**

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
General Counsel (as to form only)

**ATTACHMENTS:**

Proposed Resolution  
Exhibit 1, Original Tower Lease Agreement  
Exhibit 2, Proposed Tower Purchase Agreement  
Exhibit 3, Proposed Tower Site Lease Agreement  
Exhibit 3-A, Cost of Tower Site Lease Inclusive of all Options  
Exhibit 4, Proposed Tower Lease Agreement

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### BUDGET INFORMATION

<u>2015 Budget Amount</u>	<u>Required 2015 Expenditure</u>	<u>Impact</u>
\$39,000 (PRC Tower Purchase Agreement), \$8,000 (Tower Lease Amendment); and \$26,400 (Land Lease)	\$53,600 (if Land Lease retroactive to 10/1/15)	\$0

**Explanation:** The Communication Tower and Site Asset Purchase shall be funded within the approved 2014 Capital Project "UHF Data Communication Network Upgrade. The Tower Lease Amendment and the Land Lease shall be funded within the approved 2015 Radio Maintenance Budget. The total cost of the tower lease site based on a ten-year lease and four (4), five-year options with a 3% escalator will be \$1,255,991, as described in Exhibit 3-A.

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## BACKGROUND

**PRECEDING ACTIONS:** In February 2006, the Board of Commissioners approved the purchase of a voice and data radio communication system from Motorola Solutions Inc. Subsequently, this equipment was installed at six communication sites (i.e. Indian Hill and others) and in all Pierce Transit buses, shuttles, support vehicles and Sound Transit coaches. All equipment purchased was compliant with the first phase of FCC's mandated Public Safety P-25 narrow-banding requirements.

In January of 2011, the Board of Commissioners authorized the execution of an interlocal agreement with Pierce County for operation of a combined communications network, which provides both agencies the opportunity for cost sharing while preparing to meet the second phase of FCC's mandated Public Safety P-25 narrow-banding requirements.

In December 2014, the Board of Commissioners adopted the 2015 budget. The 2015 UHF Data Communication Network Upgrade capitol project purchases Radio Communications Equipment from Motorola Solutions, Inc., and Aviat Networks to provide adequate data radio coverage supporting Pierce Transit's expanded operational service areas. To determine areas that needed appropriate actions, a detailed design review (DDR) and individual site assessment process was finalized on June 3, 2015. This DDR process identified the tower at 917 37<sup>th</sup> Ave. NE in Tacoma, a location known as and referred to herein as "Indian Hill" as a location requiring upgrades. Specifically, Indian Hill needs a tower upgrade that meets the current City of Tacoma loading standards, the engineered "G" tower standard, and FCC/FAA certified requirements for Public Safety towers. The upgrade also includes a Public Safety Compliant Facility with various other construction related upgrades to meet current building codes.

**BACKGROUND ON INDIAN HILL TOWER LOCATION:** PRC Tacoma – I LLC (PRC) owns a radio communications tower and related assets (together, "PRC Tower") on Indian Hill. PRC's Tower is situated on land owned by IWG TOWERS ASSETS 1, LLC (d/b/a and referred to herein as "InSite Wireless"), and PRC holds a Tower Site License Agreement with InSite which grants PRC limited rights to operate a public radio station on the PRC Tower at Indian Hill.

Pierce Transit and PRC have a lease agreement dated June 1, 2007 ("Tower Lease") which grants to Pierce Transit the right to keep certain equipment on PRC Tower and as well as the right of first refusal to purchase the PRC Tower. On July 22, 2013, PRC confirmed their intent to sell the PRC Tower to Pierce Transit.

Pierce Transit desires to purchase the PRC Tower because it was a part of the original Pierce Transit design because of its critical location providing coverage for Pierce Transit's greater Tacoma, the Tide Flats and Federal Way service areas. The Indian Hill Communication Site is a key element of the Single County Wide Communication System (SCWCS) and is strategically located within Pierce County,

providing valuable voice and data radio coverage for the Combined Communication Network Enterprise (CCN) joint venture and for First Responders and Public Safety communications within the Puget Sound area.

**PROPOSED TRANSACTIONS:**

**TOWER LEASE AMENDMENT**

PRC gave Pierce Transit notice of intent to sell its Communication Tower and Site Assets in July of 2013. Pierce Transit has not yet been able to effectuate that purchase because negotiations with the land owner have been protracted and complicated.

In August of 2015, PRC expressed an unwillingness to continue to extend the right of first refusal after September 1, 2015 if Pierce Transit does not compensate PRC at a rate of \$2,000 per month. PRC has also taken the position (which is disputed by Pierce Transit) that the existing Tower Lease has expired, leaving Pierce Transit without rights to the PRC Tower. Staff believes that Pierce Transit has benefitted from PRC's extraordinary patience in the process of the Agency's negotiating a land lease with InSite Wireless in that PRC has extended Pierce Transit's right of first refusal for over two years.

In order to retain the right to keep Pierce Transit equipment on the PRC Tower while the three transactions that are subject of this Resolution are finalized, and in order to retain the right of first refusal, Pierce Transit and PRC have negotiated a tentative Tower Lease Amendment, pursuant to which Pierce Transit would pay to PRC \$2,000 per month in September and October of 2015, and \$2,000 thereafter in consideration of PRC's continued extension of the right of first refusal through March 31, 2016 (with a right to terminate earlier) since the parties require additional time to finalize the Land Lease with InSite Wireless. Pierce Transit staff believes that this Tower Lease Amendment and payment thereunder is fair consideration for the extension of the right of first refusal.

**COMMUNICATION TOWER PURCHASE**

Pierce Transit and PRC have reached a tentative Tower Purchase Agreement, pursuant to which Pierce Transit would pay \$39,000 for the PRC Tower, contingent on the ability of Pierce Transit to reach a land lease agreement with the owner of the land, InSite Wireless.

Pierce Transit contracted with Colliers International, a communication valuation professional company, to conduct a market analysis of the PRC Tower and related assets, which established a fair market value for the PRC Tower as up to \$39,988.

**LAND LEASE**

The proposed Land Lease would be a 10 year Lease with options for up to four (4) additional consecutive periods of five (5) years each. Rent for the Premises would be Twenty-Six Thousand Four Hundred and No/100 Dollars (\$26,400.00) per annum for the first full year of the Term (Base Rent). Base Rent will increase annually by three percent (3%) at the anniversary date. As of the date of this Resolution, Pierce Transit staff awaits a response from InSite to these proposed terms.

Pierce Transit contracted with Colliers International, a communication valuation professional company, to conduct a market analysis of the Indian Hill Property, confirming that a fair lease value for this location was up to \$2200 per month.

This resolution seeks authority to enter into the Tower Lease Amendment; enter into the Tower Purchase Agreement; and enter into the Land Lease as set forth in Exhibits 2, 3 and 4 attached here-to-exercise Pierce Transit's legal rights as stated in Section 3 of the Pierce Transit and PRC Tacoma – I LLC Tower License Agreement dated June 1, 2007, granting Pierce Transit the right of first refusal to purchase the Communication Site Assets located at 4917 37th Avenue NE, Tacoma, Washington, if at any time PRC Tacoma - I LLC or Puget Sound Public Radio desired to sell or abandon their interest in the Communication Site, titled as "Indian Hill".

ALTERNATIVES:

The alternative would be to not amend the Tower Lease, to not exercise Pierce Transit's right of first refusal to purchase the PRC Tower or to not execute the Land Lease.

RECOMMENDATION:

Approve Resolution No. 15-056 authorizing (1) the Chief Executive Officer to enter into and execute the Tower Lease Amendment with PRC Tacoma until March 31, 2016 in substantially the same form as Exhibit 4; (2) to enter into and execute a Tower Purchase Agreement with PRC Tacoma in substantially the same form as Exhibit 2; and (3) enter into and execute the Tower Lease Site with InSite Wireless in substantially the same form as Exhibit 3, and authorizing General Counsel to make any non-substantive changes deemed necessary.

## RESOLUTION NO. 15-056

1 A RESOLUTION of The Board of Commissioners of Pierce Transit  
2 Authorizing the Following: (1) Amendment of Lease with PRC Tacoma-1, LLC Until March 31, 2016; (2)  
3 Purchase of Communication Tower and Site Assets from PRC Tacoma -1, LLC; and (3) Execution of a Tower  
4 Site Lease With IWG Towers Assets I, LLC, (d/b/a InSite Wireless)

5  
6 WHEREAS, by Resolution No. 06-004, approved on the 13<sup>th</sup> day of February, 2006, the Board of  
7 Commissioners of Pierce Transit authorized execution of a master agreement for a Mobile Communications  
8 System, Task Order No. 1 for Voice and Data Radio and Task Order No. 2 for CAD/AVL with Motorola and  
9 Amendment of the 2006 Capital Budget; and

10 WHEREAS, by Resolution No. 10-024, approved on the 13<sup>th</sup> day of September, 2010, the Board of  
11 Commissioners of Pierce Transit Amended the 2010 Operating Budget and authorized the execution of Sole  
12 Source purchases of Radio/CAD/AVL equipment with Motorola and ACS for installation on Sound Transit  
13 coaches; and

14 WHEREAS, by Resolution No. 11-004, approved on the 10<sup>th</sup> day of January, 2011, the Board of  
15 Commissioners of Pierce Transit authorized entering into an interagency agreement with Pierce County for the  
16 Operations of a Combined Communications Network; and

17 WHEREAS, by Resolution No.14-053, approved on the 5<sup>th</sup> day of September, 2014, the Board of  
18 Commissioners of Pierce Transit authorized to purchase Radio Communications Equipment from Motorola  
19 Solutions, Inc. and Aviat Networks to Upgrade the UHF Data Communications Network; and

20 WHEREAS, by Resolution No. 14-074, approved on the 10<sup>th</sup> day of November, 2014, the Board of  
21 Commissioners of Pierce Transit authorized entering into and the execution of an interlocal Agreement with  
22 Pierce County for the Creation, Operation, and Governance of a Combined Communication Network; and

23 WHEREAS, PRC Tacoma – I LLC (PRC) owns a radio communications tower and related assets  
24 (together, “PRC Tower”) located at 917 37<sup>th</sup> Ave. NE, Tacoma, Washington, a location known as and  
25 referred to herein as “Indian Hill;” and

26 WHEREAS, PRC’s Tower is situated on land owned by IWG TOWERS ASSETS 1, LLC (d/b/a and  
27 referred to herein as “InSite Wireless”), and PRC holds a Tower Site License Agreement with InSite which  
28 grants PRC limited rights to operate a public radio station on the PRC Tower at Indian Hill; and

29 WHEREAS, Pierce Transit and PRC have a lease agreement dated June 1, 2007 (“Tower Lease”), a  
30 copy of which is attached hereto as Exhibit 1, granting Pierce Transit the right to keep certain equipment  
31 on PRC Tower and as well as the right of first refusal to purchase the PRC Tower; and

1 WHEREAS, PRC confirmed their intent to sell the PRC Tower to Pierce Transit by letter dated July  
2 22, 2013; and

3 WHEREAS, Pierce Transit desires to purchase the PRC Tower because of its critical location within  
4 Pierce County providing coverage for Pierce Transit's greater Tacoma, the Tide Flats and Federal Way  
5 service areas; and

6 WHEREAS, Pierce Transit and PRC have mutually agreed to a Tower Purchase Agreement, attached  
7 hereto as Exhibit 2, pursuant to which Pierce Transit would pay \$39,000 for the PRC Tower, contingent on  
8 the ability of Pierce Transit to reach a land lease agreement with the owner of the land, InSite Wireless;  
9 and

10 WHEREAS, Pierce Transit has reached a tentative land lease agreement with InSite Wireless,  
11 attached hereto as Exhibit 3 ("Land Lease"), whereby Pierce Transit would pay \$2,200 per month (subject  
12 to increase annually) for the right to operate the PRC Tower or a future tower at Indian Hill; and

13 WHEREAS, PRC has expressed an unwillingness to continue to extend the right of first refusal after  
14 September 1, 2015 if Pierce Transit does not compensate PRC at a rate of \$2,000 per month; and

15 WHEREAS, Pierce Transit has benefitted from PRC's extraordinary patience in the process of the  
16 Agency's negotiating a land lease with InSite Wireless in that PRC has extended Pierce Transit's right of  
17 first refusal for over two years; and

18 WHEREAS, Pierce Transit and PRC have negotiated a Tower Lease Amendment, attached hereto as  
19 Exhibit 4, pursuant to which Pierce Transit would pay to PRC \$2,000 per month in consideration of PRC's  
20 continued extension of the right of first refusal through March 31, 2016 (with a right to terminate earlier)  
21 since the parties require additional time to finalize the Land Lease with InSite Wireless; and

22 WHEREAS, Pierce Transit staff believe that this Tower Lease Amendment and payment thereunder  
23 is fair consideration for the continued extension of the right of first refusal which needs to be in place until  
24 the Land Lease is finalized; and

25 WHEREAS, Colliers International, a communication valuation professional company, confirmed in an  
26 appraisal dated March 23, 2014 that the fair market value of the PRC Tower as up to \$39,988, and the fair  
27 market rent for a land lease at Indian Hill as up to \$2,200 per month; and

28 WHEREAS, Pierce Transit's 2014 UHF Data Communication Network Upgrade Project has adequate  
29 funding to purchase the PRC Tower for \$39,000; and

30 WHEREAS, Pierce Transit's 2015 Radio Maintenance Budget has adequate funding for the Land  
31 Lease, as reflected in Exhibit 3-A; and

1  
2 WHEREAS, Pierce Transit's 2015 Radio Maintenance budget has adequate funding for the \$8,000  
3 which would be required under the Tower Lease Amendment if needed through the end of 2015; and

4 NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

5 Section 1. The Chief Executive Officer is herewith authorized to do the following: (1) enter into and  
6 execute the Tower Lease Amendment with PRC Tacoma until March 31, 2016 in substantially the same form  
7 as Exhibit 4 attached hereto; (2) enter into and execute a Tower Purchase Agreement with PRC Tacoma in  
8 substantially the same form as Exhibit 2 attached hereto; and (3) enter into and execute a Tower Site Lease  
9 agreement with InSite Wireless in substantially the same form as Exhibit 3, attached hereto, and authorizing  
10 General Counsel to make any non-substantive changes deemed necessary.

11 ADOPTED by the Board of Commissioners of Pierce Transit at a regular meeting thereof held on the  
12 12<sup>th</sup> day of October, 2015.

13  
14 PIERCE TRANSIT

15  
16  
17 \_\_\_\_\_  
18 Rick Talbert, Chair  
19 Board of Commissioners

20 ATTEST/AUTHENTICATED

21  
22  
23 \_\_\_\_\_  
24 Deanne Jacobson, CMC  
25 Clerk of the Board

LEASE

THIS LEASE, made and entered into this 1<sup>st</sup> day of June, 2007, by and between PRC Tacoma – I LLC, a Washington State limited liability company, hereinafter called LESSOR, and Pierce Transit [Pierce County Public Transportation Benefit Area Corporation, a Washington municipal corporation], hereinafter called LESSEE. LESSOR is owned by Public Radio Capital ("PRC"), a Colorado nonprofit corporation and Puget Sound Public Radio ("PSPR"), a Washington State nonprofit corporation. LESSOR holds a general lease and owns a tower and building on Indian Hill, Tacoma, Washington (the 'Leased Premises'), and uses the Leased Premises to transmit the signal of Radio Station KXOT (FM) (the Premises).

## WITNESSETH:

In consideration of the covenants and commitments herein contained, LESSOR hereby leases to LESSEE for the term hereunder specified, and LESSEE hereby leases from LESSOR, those specified portions of the Premises which are particularly described in Exhibit "B" (the "Leased Premises"), attached hereto and by this reference incorporated herein. The term 'Lessee's Equipment' shall include antennas, cable, computer controls, and any other equipment or devices used or useful in the operation of Lessee's business as provided in this Lease.

1. PURPOSE.

LESSEE'S occupancy of the Leased Premises shall be non-exclusive and shall be only for the purpose of 700MHz voice and data, 450 MHz data, and 6 GHz microwave public safety radio system.

2. TERM.

The Initial Term of this Lease shall be twenty years (Initial Term). The Initial Term shall automatically be renewed for successive renewal terms of five (5) years, unless either party to this Lease elects to terminate by giving written notice to the other party at least six (6) months prior to the expiration of the Initial Term or any renewal term (collectively, the "Term"). The Term and all other provisions contained in this Lease are subject to the extension of LESSOR's ground lease with Comcast, which expires on April 7, 2012, or LESSOR's purchase of the property on or before that date.

3. RENTAL.

Provided it performs the duties set forth in Paragraph 5 below, LESSEE shall make no rental payments for the first ten years of the Term. Beginning in year eleven of the Term, Lessee shall pay \$1,200.00 per month in rent. Each year thereafter, there shall be a 5% increase in the monthly rent paid by LESSEE. Subject to the right of PSPR to acquire LESSOR, LESSEE will have the first right of refusal to acquire the tower should LESSOR or PSPR choose to sell or abandon LESSOR's interest in the



Premises. At the time of the renewal of the ground lease or purchase of the property from Comcast, LESSEE will assist LESSOR where possible with the acquisition process.

LESSEE and LESSOR shall pay the monthly electric bill in proportion to their respective electrical use at the Premises as determined by equipment load for their respective equipment. Alternatively, LESSOR may require LESSEE, at LESSEE's expense, to separately meter its equipment.

Lessee shall provide evidence of self insurance to LESSOR, sufficient to cover its equipment and any damage to LESSOR and its tower.

4. DUTIES OF LESSOR.

LESSOR shall provide space on the Leased Premises for LESSEE's equipment which shall occupy up to four (4) standard 19" racks, 36" deep, and one (1) 23" rack 36" deep consisting of microwave infrastructure, radio infrastructure, antenna combining and other associated equipment.

LESSOR shall permit LESSEE to mount antennas on the Leased Premises as described in Exhibit B. LESSEE shall coordinate any antenna installation with LESSOR thirty (30) days prior to beginning such work.

5. DUTIES OF LESSEE:

Prior to Lessee's occupancy of the Premises or any portion thereof, LESSEE shall provide a structural and tower loading analysis of the Leased Premises prior to installation of any tower equipment. The analysis shall demonstrate, to the satisfaction of LESSOR, that LESSEE's proposed use of the Leased Premises complies with reasonable safety standards. If additional structural reinforcement is required for LESSEE's equipment, LESSEE shall incur at its own expense the costs of reinforcing the tower to meet such requirements prior to installation of any antenna equipment.

LESSEE shall provide its equipment space and heat dissipation (btu/hr) specifications to LESSOR thirty (30) days prior to installation of any LESSEE equipment. Should the heat dissipation of LESSEE's equipment exceed the capabilities of existing HVAC, LESSEE will pay the cost to upgrade the HVAC.

LESSEE shall at its own expense conduct an interference analysis and present it to LESSOR for review prior to installation of any LESSEE equipment. If interference to any equipment is caused by LESSEE's equipment, LESSEE shall immediately take measures to eliminate the interference.

LESSEE shall provide at its own expense upgrade building and equipment grounding to meet current R56 grounding standards.

LESSEE shall at its own expense provide sealing for the building to prevent rodent and insect entry and establish a pest eradication program.

LESSEE shall at its own expense provide grounds maintenance around the shelter and fence line at the site, guy wire paths and anchor areas. LESSEE shall also maintain the access road and clear brush as needed.

LESSEE shall replace at its own expense damaged and corroded fencing that may cause communications system interference.

LESSEE shall at its own expense provide 24-hour site security alarms and monitoring for the shelter.

**6. REMEDIES UPON DEFAULT OF RENT.**

In the event of any failure by LESSEE to perform the duties detailed in Section 5 above, and to pay the rents in full and at the time required by this Lease, then, at the option of LESSOR, by notice as set forth in Section 20, this lease and all of LESSEE'S rights thereunder shall be forthwith terminated and LESSOR may immediately retake possession of the Leased Premises. In the event of such termination the LESSEE shall be allowed to remove its equipment from the Premises within a reasonable time period, not to exceed 60 days. At the option of the LESSOR, the LESSOR may witness this removal.

**7. INSTALLATION, USE AND REMOVAL OF EQUIPMENT.**

Installation of equipment or material of any type on the Leased Premises shall be done by LESSEE only under the supervision, and with the prior approval of LESSOR, such approval will not be unreasonably withheld. LESSOR may forbid installation of any material or modifications of any type to the Lease Premises if, in LESSOR's sole judgment, they shall damage the property or interfere with the rights of LESSOR or any other lessee. All expenses related to the installation, operation or removal of LESSEE'S equipment shall be at the sole cost and expense of LESSEE. At the expiration of the Lease, LESSEE agrees to repair any damage which may be caused by the removal of LESSEE'S equipment from the said Premises.

**8. INTERFERENCE BY LESSEE.**

All expenses associated with correcting pattern distortions, intermodulation and other interference to KXOT or other existing tenants of the Premises, caused by installation or use of LESSEE'S equipment shall be paid for by LESSEE. Any pattern distortions, intermodulation or other interference shall be corrected immediately by LESSEE and in the event such corrections cannot be made immediately, LESSEE shall terminate its operation until such corrections are made. LESSEE further agrees to hold LESSOR harmless from any claim made by any other lessees or third persons affected or damaged by such pattern distortions, intermodulation or other interference.

9. INTERFERENCE WITH LESSEE.

LESSOR will require tenants that occupy the Premises subsequent to LESSEE to protect LESSEE from pattern distortions, intermodulation and other interference, provided, however, that LESSEE shall be responsible for keeping and maintaining its equipment in good, working condition.

LESSOR shall not be responsible for any interference to LESSEE caused by equipment operating at the site when the LESSEE'S equipment is installed, but will cooperate in the solution of such problems, to the extent reasonable, but all expenses necessary to resolve such interference shall be borne by LESSEE alone. For future equipment additions, the party installing or altering their equipment will be responsible for resolving interference, if any, to the other parties system.

10. ASSIGNMENT.

LESSEE agrees it will not assign this lease without the prior written consent of LESSOR, which consent, in any event, shall require the sublessee to comply with the terms of this Lease and any other terms deemed reasonable due to intervening circumstances or conditions unique to the proposed assignee. Otherwise, the consent of Lessor shall not unreasonably be withheld. In the event LESSEE enters into a sublease LESSEE shall pay LESSOR 100% of the rent collected by LESSEE.

11. LESSEE'S COVENANT.

LESSEE does hereby covenant and agree to and with LESSOR as follows:

- a. Not to engage in any business on the Leased Premises, except as set forth in this Agreement.
- b. To make no unlawful, improper or offensive use of the said Premises, or any part thereof, and to comply with all the laws, rules and regulations of federal, state, county, city or other governmental subdivision which may have rules, regulations, ordinances, statutes or law pertaining to the conduct of LESSEE'S business.
- c. Not to commit or suffer any waste upon said Premises;
- d. Not to make any changes in or additions or alterations to the Premises without the prior written consent of LESSOR.
- e. Not to permit any liens of any kind to attach to the Leased Premises or LESSEE'S equipment and fixtures, except as are subordinate to the interest of LESSOR and subject to LESSOR's rights and remedies under this lease.
- f. At the end of any term, or upon any sooner termination of this Lease, to quit and deliver up the Premises to LESSOR peaceably and quietly, and in as good order and condition, excepting reasonable use and wear thereof.

12. LIABILITY FOR DAMAGE TO PROPERTY.

LESSOR shall not be liable for any damage to the equipment or property of LESSEE resulting from fire or collapse of the said Leased Premises or any portion thereof, or by reason of any electrical apparatus in or about the said Leased Premises, or from any other cause not resulting from the negligent acts or omissions of LESSOR, its agents or employees.

13. DESTRUCTION AND RECONSTRUCTION.

In the event the Premises are destroyed or damaged by fire or other casualty or peril, to such an extent as to render the Leased Premises untenable, or practically so, in the sole judgment of LESSOR, then LESSOR may, at its option, terminate this Lease. Whether the Premises are wholly untenable or not, LESSOR may proceed to immediately rebuild and restore the Premises. In that event, LESSOR shall, in writing, notify LESSEE of its intention to do so within thirty (30) days after such destruction or damage, either partial or whole, and during such period of rebuilding and restoration the rent shall be abated in such proportion as LESSEE'S use of the Leased Premises is diminished. In the event of the election of LESSOR to terminate, all rights and liabilities with respect to the unexpired portion of the term shall thereupon cease and any unearned rent shall be refunded to LESSEE. Thereupon the rights, duties and obligations of the parties as otherwise set forth herein with regard to termination shall be in effect.

14. EMINENT DOMAIN.

In the event the Premises of which the Leased Premises are a part is taken by a public agency under the law of eminent domain, this lease shall thereupon terminate.

15. IMPROVEMENTS BY LESSEE.

LESSEE shall not be entitled to any compensation for any improvements made by it to the said leased Premises or for any other reason arising out of the existing lease.

16. HOLDING OVER.

Any holding over by LESSEE after the expiration of the term of this lease or any extension thereof shall be as a tenant from month to month only, and not otherwise.

17. SIGNS.

LESSEE shall not place any signs upon the Premises without Lessor's consent.

18. JURISDICTION AND VENUE.

Jurisdiction of any action brought under this lease shall be in the Superior Court in the State of Washington and the venue of any such action shall be Pierce County. This agreement is governed by the laws of the State of Washington.

19. NOTICES.

Notices required to be in writing shall be sufficient if addressed to the respective parties at the office of the registered agent or other appointed representative of the party, by certified mail, receipt requested. The respective addresses of the parties are as follows:

LESSOR: LESSOR Tacoma – I LLC  
c/o Marc O. Hand  
7409 South Alton Court  
Centennial, CO 80112

LESSEE: Pierce County Public Transportation  
Benefit Area Corporation (Pierce  
Transit)  
c/o Raymon Hawkins  
3701 96<sup>th</sup> Street SW  
PO Box 99070  
Lakewood, WA 98469-0070

or such other address as may be subsequently provided by either party to the other.

**20. INDEMNIFICATION AND RELEASE OF LIABILITY**

- a. At any time during the term of this Agreement, LESSOR may require LESSEE to provide certificates of insurance for general liability, workers compensation and automobile insurance in limits that are reasonably satisfactory to LESSOR. All policies shall name LESSOR as an additional insured.
- b. LESSOR shall specifically and expressly defend, indemnify, and save harmless, LESSEE, its officers, agents and employees at its own expense from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind in nature, including attorneys' fees and claims by the employees of the LESSOR arising out of and in connection with or incident to the work of this contract provided that if such suits, claims, actions, losses, costs, penalties, and damages are caused by or result from the concurrent negligence of the LESSOR and LESSEE, then this indemnity provision shall be valid and enforceable only to the extent of the LESSOR's negligence. Further, LESSOR shall not be required to hold LESSEE harmless or defend LESSEE, its officers, agents, and employees from any and all suits, claims, actions, losses, costs, penalties, and damages arising from the sole negligence of LESSEE, its officers, agents, and employees. This indemnification obligation shall include, but is not limited to, all claims against LESSEE by an employee or former employee of the LESSOR.
- c. The indemnification provided herein shall apply to and require each party to defend, indemnify and hold harmless the other party for claims brought by an employee of one party against the other party if said claims are alleged to have arisen from the alleged negligent actions or omissions of the employee's employer, and in such case, LESSOR and LESSEE, with respect to each other only, waive and will not assert against each other, any immunity under the Industrial Act (RCW Title 51). This waiver is limited to actions by and between LESSOR and LESSEE only and does not extend to the employees of either party.

LESSOR and LESSEE expressly do not waive their immunity against claims brought by their own employees.

- d. LESSOR shall not be liable for any accident or injury to property or persons occurring in or about the said Leased Premises which is caused by or arises out of any negligence, breach of contract, or other use of the Premises, on the part of LESSEE or its agents, employees or other persons acting on LESSEE'S behalf and LESSEE shall hold LESSOR harmless therefrom and defend LESSOR's interests against any claim so arising. LESSOR agrees to indemnify and hold LESSEE harmless from any liability which may attach to LESSOR as a consequence of the acts or omissions of LESSOR, its members (including PSPR), officers, agents or employees.

#### 21. GENERAL REMEDIES.

If any transfer or assignment, voluntary or involuntary, of this lease be attempted, except as provided herein, or if LESSEE shall fail or neglect to keep and observe any of the covenants, terms and conditions herein contained, then LESSOR shall issue a notice to cure the default to the LESSEE. If the LESSEE fails to cure the default within 30 days, the LESSOR may immediately, or at anytime thereafter and while such default continues, and without notice or demand, enter into or upon the said Premises or any part thereof, repossess the same, and expel LESSEE and those claiming under it and remove its or their effects, without being taken or deemed guilty in any manner of trespass, and without prejudice to any other remedies which might otherwise be available at law or in equity for collection of arrears of rent or other proceeding for breach of covenant or agreement. However, the LESSEE shall have the opportunity to remove its effects within 30 days from notice to vacate the Premises.

#### 22. ATTORNEY'S FEES AND COURT COSTS.

In the event either party is required to engage an attorney to enforce their rights hereunder or to interpret this agreement, then the prevailing party shall be entitled to reasonable attorney's fees and cost of suit.

#### 23. ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement between the parties superseding any and all prior agreements and understandings, oral or written, with respect to the subject matter of this Agreement. Any alteration or modification of the Agreement shall be valid only if set forth in writing and signed by the parties hereto.

#### 24. DISCRIMINATION.

LESSOR and LESSEE each represent that, as a matter of standing policy, it does not discriminate against individuals because of their race, color, religion, age, sex, national origin, disability, or any former member of the U.S. Armed Services, including disabled veterans.

**\*\*\*Signature Page Follows\*\*\***

IN WITNESS WHEREOF, the parties hereto have caused the lease to be signed by the respective person or duly authorized officer on the date and year set forth above.

**PRC-TACOMA I LLC:**

By: Public Radio  
Capital as managing member



By: Marc O. Hand  
Its: Managing Director  
Date: 8-31-2007

**PIERCE COUNTY PUBLIC  
TRANSPORTATION BENEFIT  
AREA CORPORATION  
(PIERCE TRANSIT):**



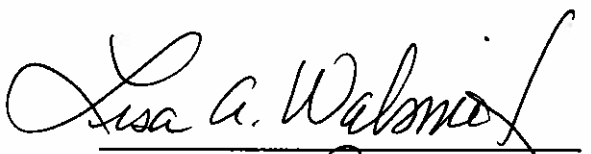
By: Lynne Griffith  
Its: CEO  
Date: 8/1/07

APPROVED AS TO FORM:



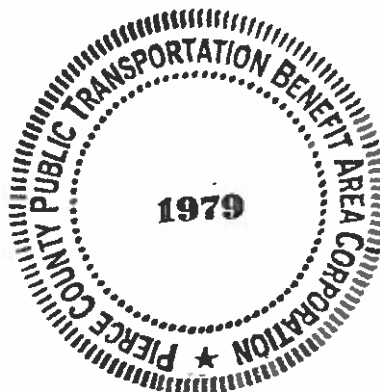
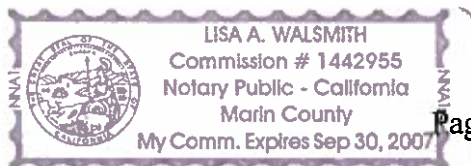
By: Wayne Fanshier  
Its: VP, Finance & Administration

ATTEST:

  
Notary Public  
State of California  
County of Marin

ATTEST:

  
Treva Percival, Clerk of the Board





**Exhibit B**  
**Description of Leased Premises**





[illegible]

[illegible]

**PROJECT INFORMATION**

**PIERCE TRANSIT**

**INDIAN HILL 2**

4877 37TH AVE. NE  
TACOMA, WA 98422  
PIERCE COUNTY, WA

5000 1ST AVENUE, S.W. STE. 200  
SEASIDE, WA 98148  
CONTACT: ANDY PARKS  
PHONE: 418-807-2504

PLANS PREPARED BY

**SI**

Communication Services, Inc.  
300 WEST VALLEY ROAD, N. SUITE 200  
PACIFIC, WA 98043  
PHONE: 360-794-8000 FAX: 360-794-8000

PROJECT INFORMATION

NO. DATE DESCRIPTION BY

1	10/27/00	PRELIMINARY	JAS
2	12/06/00	PRELIMINARY	JAS

SEALED

SHEET TITLE

**ELEVATION**

SHEET NUMBER

**C-3**

SCALE  
1" = 30'-0"

**ELEVATION**

EXISTING 450' GUYED TOWER

PROPOSED RX ANTENNA  
DB87BH120E @ 200'  
AZIMUTH = 290°

PROPOSED TX ANTENNA  
LPA-80063-4CF @ 170'  
AZIMUTH = 290°

PROPOSED TX ANTENNA SCALE  
BVP13-450/0677 @ 170' AZIMUTH = 310°

PROPOSED 8' W/W DSH TO PYRAMID  
@ 108' AZIMUTH = 152.37°

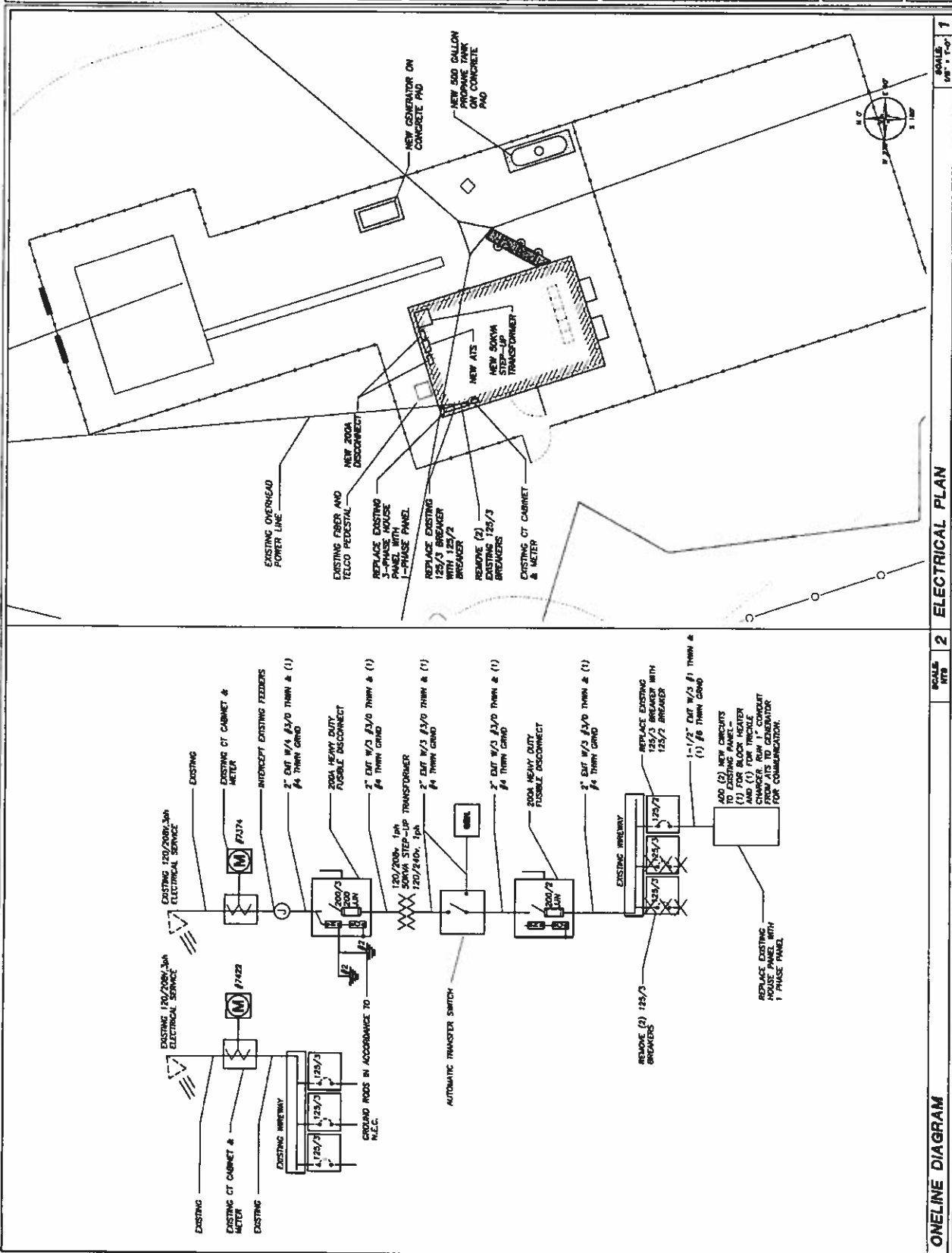
PROPOSED 8' W/W DSH TO TOP  
HAT @ 103' AZIMUTH = 11.48°

**NOTE:**

1. LEE MOUNT MICROWAVE DISHES USING VALMONT DESIGNER'S RECOMMENDATIONS
2. LEE MOUNT ANTENNAS USING VALMONT DESIGNER'S RECOMMENDATIONS
3. FINAL ANTENNA HEIGHTS, AZIMUTHS, MOUNTS AND MOUNTING LEG TO BE VERIFIED PRIOR TO INSTALLATION
4. ALL ANTENNA, COAX CABLE AND MICROWAVE DISH MOUNTING BY OTHERS
5. EXISTING ANTENNAS NOT SHOWN FOR CLARITY

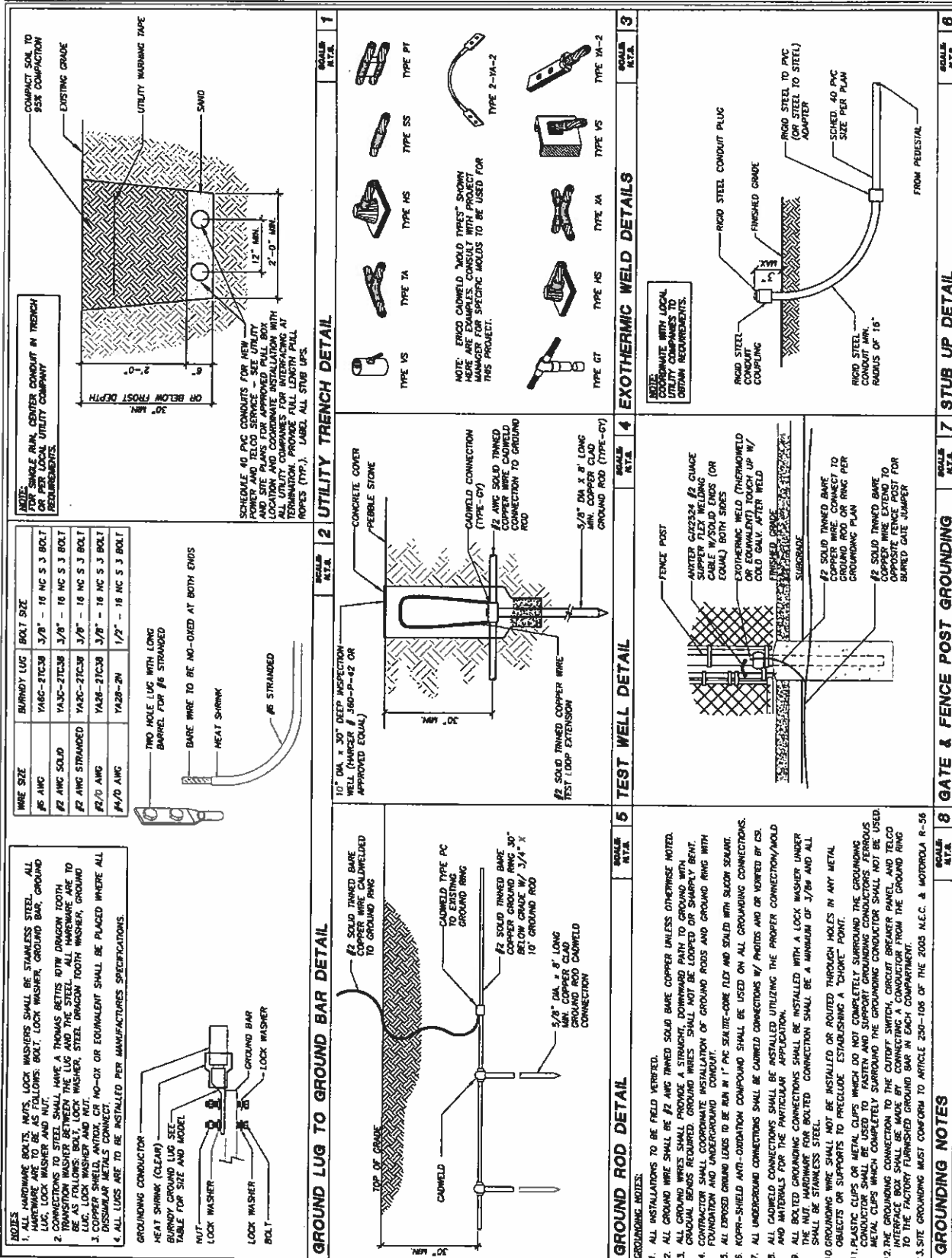
6. REVERSE STRUCTURAL ANALYSIS REQUIRED FOR NEW ANTENNA LOADING

<p><b>MOTOROLA INC.</b> 4800 NE LAMON HILL RD. BTL 300 REDWOOD CITY, CA 94065 COMMUNICATIONS DIVISION PHONE: 415 386 7000</p>	<p><b>SI</b> Communication Services, Inc. 200 WEST 10TH AVENUE, SUITE 300 DENVER, CO 80202 VOICE: 303 733 4300 FAX: 303 733 4306</p>	<p><b>PROJECT INFORMATION</b></p> <p><b>PIERCE TRANSIT</b></p> <p><b>INDIAN HILL 2</b></p> <p>4800 87th AVE. NE TACOMA, WA 98150 PIERCE COUNTY, WA</p>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>BY</th> </tr> <tr> <td>1</td> <td>10/21/06</td> <td>PRELIMINARY</td> <td>JAS</td> </tr> <tr> <td>2</td> <td>12/06/06</td> <td>PRELIMINARY</td> <td>JAS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION	BY	1	10/21/06	PRELIMINARY	JAS	2	12/06/06	PRELIMINARY	JAS																									<p>SHEET TITLE</p> <p><b>GENERAL DETAILS</b></p> <p>SHEET NUMBER</p> <p><b>C-4</b></p>
NO.	DATE	DESCRIPTION	BY																																						
1	10/21/06	PRELIMINARY	JAS																																						
2	12/06/06	PRELIMINARY	JAS																																						
<p><b>NOT USED</b></p>		<p><b>PROANE TANK VALVE DETAIL</b></p> <p>SCALE: 1/4" = 1'-0"</p> <p>1</p>		<p><b>GENERATOR FOUNDATION DETAIL</b></p> <p>SCALE: 1/4" = 1'-0"</p> <p>1</p>		<p><b>PROPANE TANK FOUNDATION DETAIL</b></p> <p>SCALE: 3/4" = 1'-0"</p> <p>2</p>		<p><b>PROPANE TANK DETAILS</b></p> <p>SCALE: 3/4" = 1'-0"</p> <p>3</p>																																	
<p><b>NOT USED</b></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="3">SNAP IN HANGER SIZE GUIDE</th> </tr> <tr> <th>VALU-MOUNT PART NUMBER</th> <th>CON. SIZE</th> <th></th> </tr> <tr> <td>B1559</td> <td>1/2"</td> <td></td> </tr> <tr> <td>B1560</td> <td>7/8"</td> <td></td> </tr> <tr> <td>B2117</td> <td>1 1/8"</td> <td></td> </tr> </table>	SNAP IN HANGER SIZE GUIDE			VALU-MOUNT PART NUMBER	CON. SIZE		B1559	1/2"		B1560	7/8"		B2117	1 1/8"		<p><b>ICE BRIDGE DETAIL</b></p> <p>SCALE: 3/4" = 1'-0"</p> <p>4</p>		<p><b>PROPANE TANK FOUNDATION DETAIL</b></p> <p>SCALE: 3/4" = 1'-0"</p> <p>2</p>		<p><b>PROPANE TANK DETAILS</b></p> <p>SCALE: 3/4" = 1'-0"</p> <p>3</p>																				
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[illegible]

## **PURCHASE AGREEMENT**

**THIS PURCHASE AGREEMENT** ("Agreement") is made and entered into as of the \_\_\_\_ day of September, 2015, by and between PRC Tacoma – I LLC, a Colorado limited liability company ("Seller"), and Pierce County Public Transportation Benefit Area Corporation, a Washington municipal corporation ("Buyer").

### **RECITALS:**

A. Seller owns a communications tower and certain improvements and personal property used or useful in connection with the Tower (collectively, the "Tower"), located on a parcel of real property in Pierce County, Washington, more particularly described on Exhibit A attached hereto (the "Land"). The Tower is registered with the Antenna Structure Registration System of the Federal Communications Commission ("FCC") as ASR #1037820.

B. Seller is the licensee under a certain Tower Site License Agreement, dated January 1, 2013 (the "License Agreement"), between Seller and IWG Towers Assets I, LLC, a Delaware limited liability company (as successor-in-interest to CTI Towers, Inc., a Delaware corporation) ("Fee Owner"), pursuant to which, *inter alia*, Fee Owner grants to Seller the right to locate the Tower on the Land.

C. Buyer currently leases space on the Tower from Seller pursuant to that certain [\_\_\_\_], dated [\_\_\_\_] (the "Existing Tower Sublease").

D. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of Seller's right, title and interest in and to the Tower.

E. In anticipation of the acquisition of the Tower in accordance with this Agreement, Buyer is in the process of negotiating a ground lease (the "Ground Lease") with Fee Owner pursuant to which Buyer will lease a portion of the Land from Fee Owner and obtain the right to locate the Tower upon the Land.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

## **SECTION 1**

### **ASSETS TO BE SOLD**

On the Closing Date (as hereinafter defined), and subject to the terms and conditions hereinafter set forth, Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase from Seller the Tower, free and clear of any liens or liabilities.

## SECTION 2

### **PURCHASE PRICE**

2.1 Purchase Price. The purchase price for the Tower (the "Purchase Price") shall be Thirty Nine Thousand Dollars (\$39,000.00), subject to adjustments and prorations, if any, as provided for under this Agreement.

2.2 Escrow Holder. The University Place office of Ticor Title Company ("Escrow Holder" in its capacity as escrow holder and "Title Company" in its capacity as title insurer) has been designated as Escrow Holder and Title Company hereunder by mutual agreement of Seller and Buyer. Upon execution of this Agreement by the last of Seller and Buyer, Escrow Holder shall open a closing escrow for the benefit of Buyer and Seller in accordance with the terms of this Agreement. Buyer and Seller shall enter into any commercially reasonable supplemental escrow agreement required by Escrow Holder in connection therewith.

2.3 Payment of Purchase Price. The Purchase Price shall be paid to Seller as follows:

(a) Upon execution and delivery of this Agreement, Buyer shall deposit with Escrow Holder Three Thousand Nine Hundred Dollars (\$3,900.00) as earnest money ("Initial Deposit").

(b) The Purchase Price, less the Initial Deposit, shall be deposited by Buyer with Escrow Holder on or prior to 10:00 a.m. on the Closing Date.

2.4 Allocation of Purchase Price. The Purchase Price shall be allocated entirely to personal property, it being agreed by Seller and Buyer that the Tower is personal property and that the Deed (as hereinafter defined) is being delivered by Seller to Buyer solely for purposes of providing clear title in the event that any portion of the Tower is at any point deemed to be real property rather than personal property, and that any such real property would have no intrinsic value separate and apart from the Tower. Seller and Buyer agree to prepare and file any required federal, state and/or local tax returns and other filings reflecting this transaction on a basis consistent with such allocation.

## SECTION 3

### **ALLOCATION OF OBLIGATIONS BETWEEN BUYER AND SELLER**

3.1 License Agreement. All rent and fees owed by Seller to Fee Owner as of the Closing Date shall be paid by Seller, and Buyer shall not assume any responsibility for any obligations or liabilities of Seller to Fee Owner under the License Agreement.

3.2 Regulatory Compliance. All responsibility for fees and expenses related to maintaining the Tower or for complying with FCC or other regulatory requirements to the extent accruing or allocable to period prior to the Closing Date shall be paid by, and remain for all purposes the obligation of, Seller. All responsibility for fees and expenses related to maintaining the Tower or for complying with FCC or other regulatory requirements to the extent accruing or allocable to period after the Closing Date shall be paid by, and shall for all purposes be the obligation of, Buyer. Without limiting the foregoing, effective as of Closing (as hereinafter defined), Buyer will assume all legal requirements for the operation of the Tower, including associating the FCC Antenna Structure Registration Number with Buyer's FCC Registration Number ("FRN").

3.3 Real and Personal Property Taxes. All real and personal property taxes and other assessments with respect to the Tower, to the extent the same are the obligations of Seller under the License Agreement and/or Buyer under the Ground Lease, shall be prorated as of the Closing Date. Such prorations, if any, will be on the basis of taxes paid or payable in the year of Closing.

3.4 Rent Under Existing Tower Sublease. All rent payable by Buyer under the Existing Tower Sublease shall be prorated as of the Closing Date, with Buyer receiving a credit against the Purchase Price in an amount equal to all rent paid to Seller under the Existing Tower Sublease and properly allocable to the period following the Closing Date.

3.5 General Prorations. All revenues actually received and all other expenses of the Tower, including but not limited to, water, sewer and utility charges and other expenses normal to the operation and maintenance of the Tower, but excluding insurance premiums, shall be prorated as of the Closing Date.

## SECTION 4

### CLOSING CONDITIONS

4.1 Buyer's Conditions to Closing. Buyer's obligations under this Agreement are expressly conditioned on, and subject to, the following conditions precedent:

(a) Performance by Seller. Seller shall have performed all material obligations required by this Agreement to be performed by it.

(b) Representations and Warranties True. The representations and warranties of Seller contained herein shall be true and correct in all material respects as of the Closing Date.

(c) Title Policy. If Buyer elects, in its discretion, to obtain a leasehold title insurance policy (the "Title Policy") insuring Buyer's leasehold estate under the Ground Lease, then (i) the Title Company shall have irrevocably committed to issue the Title Policy

to Buyer, provided Buyer has fulfilled its obligations with respect thereto, and (ii) the Title Policy shall be subject only to such exceptions as are reasonably acceptable to Buyer.

(d) Ground Lease. Buyer and Fee Owner shall have agreed upon the form and substance of the Ground Lease, and the Fee Owner shall have delivered an executed and acknowledged counterpart of the Ground Lease (or a memorandum thereof) to Escrow Holder to be recorded upon Closing.

(e) Board Approval. The Board of Directors of Buyer shall have approved the Ground Lease and the purchase of the Tower in accordance with this Agreement by appropriate action.

The conditions set forth in this Section 4.1 are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied as of the Closing Date, Buyer shall have the right, at its sole election, either to waive the condition in question and proceed with the purchase or, in the alternative, to terminate this Agreement, in which case Buyer and Seller shall have no further rights or obligations under this Agreement, except those that expressly survive the termination hereof. Upon such termination, Escrow Holder shall return the Initial Deposit and the Second Deposit (as hereinafter defined), if applicable, to Buyer; provided, however, if all other conditions set forth in this Section 4.1 have been satisfied except for the condition set forth in clause (d) above, and if Buyer elects to terminate this Agreement due to the failure of the condition set forth in clause (d) above, then the Initial Deposit and the Second Deposit, if applicable, shall be deemed earned and payable to Seller and Escrow Holder shall pay the same to Seller.

4.2 Seller's Conditions to Closing. Seller's obligations under this Agreement are expressly conditioned on, and subject to, the following conditions precedent:

(a) Performance by Buyer. Buyer shall have performed all material obligations required by this Agreement to be performed by it.

(b) Representations and Warranties True. The representations and warranties of Buyer contained herein shall be true and correct in all material respects as of the Closing Date.

The conditions set forth in this Section 4.2 are intended solely for the benefit of Seller. If any of the foregoing conditions are not satisfied as of the Closing Date, Seller shall have the right at its sole election either to waive the condition in question and proceed with the sale or, in the alternative, to terminate this Agreement, in which case Buyer and Seller shall have no further rights or obligations under this Agreement, except those that expressly survive the termination hereof. Upon such termination, the Initial Deposit and the Second Deposit, if applicable, shall be deemed earned and payable to Seller and Escrow Holder shall pay the same to Seller.

## SECTION 5

### **CLOSING AND CLOSING DELIVERIES**

5.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall be coordinated via mail and electronic mail on a mutually convenient date, no later than September 30, 2015 (the "Outside Closing Date").

5.2 Extension of Outside Closing Date. Buyer may extend the Outside Closing Date from September 30, 2015 to October 30, 2015 by forwarding a second earnest money deposit in the amount of Three Thousand Nine Hundred Dollars (\$3,900.00) ("Second Deposit").

5.3 Failure to Close. If all of the conditions set forth in Section 4.1 have been satisfied or waived in writing by Buyer, but Buyer nonetheless fails to consummate the Closing without legal excuse on or prior to the Outside Closing Date, this Agreement shall terminate and Buyer and Seller shall have no further rights or obligations under this Agreement, except those that expressly survive the termination hereof. Upon such termination, the Initial Deposit and the Second Deposit, if applicable, shall be deemed earned and payable to Seller and Escrow Holder shall pay the same to Seller. The payment of the Initial Deposit and Second Deposit, if applicable, to Seller following termination, whether pursuant to Sections 4.1, 4.2 or this Section 5.3, shall be deemed liquidated damages, and not a penalty.

5.4 Closing Deliveries by Seller. At Closing, Seller shall deliver to Escrow Holder the following:

(a) An executed Bill of Sale, duly executed by Seller and in form and substance reasonably satisfactory to Buyer, transferring to Buyer all of Seller's interest in and claim to the Tower, free of any liens or liabilities.

(b) A Quitclaim Deed (the "Deed"), duly executed and acknowledged by Seller and in form and substance reasonably satisfactory to Buyer, transferring to Buyer all of Seller's interest in and claim to any portion of the Tower that may constitute real property, free of any liens or liabilities.

(c) A Real Estate Excise Tax Affidavit duly executed by Seller.

(d) A FIRPTA Affidavit duly executed by Seller in form and substance reasonably acceptable to Buyer.

(e) Evidence of termination of the License Agreement, in form and substance reasonably acceptable to Buyer.

(f) Evidence of Seller's authorization to enter into and perform its obligations under this Agreement, including, without limitation, the conveyance of the

Tower to Buyer, in form and substance reasonably acceptable to Buyer and, if required, the Title Company.

5.5 Closing Deliveries by Buyer. At Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(a) The Purchase Price (less the Initial Deposit and, if applicable, the Second Deposit), as adjusted for any prorations and allocations in accordance with Section 3.

(b) A Real Estate Excise Tax Affidavit duly executed by Buyer.

5.6 Closing Costs and Expenses. Buyer and Seller shall each pay their own attorney's fees and expenses to perform their obligations hereunder in addition to the following:

(a) Buyer shall pay the premium for the Title Policy, if applicable.

(b) Buyer shall pay the recording costs for the Quitclaim Deed.

(c) Buyer shall pay any sales or use tax on the Tower constituting personal property (subject to any tax exemption from which Buyer may benefit).

(d) Seller and Buyer shall each pay one half of the fees payable to Escrow holder.

## SECTION 6

### **REPRESENTATIONS AND WARRANTIES**

6.1 Seller's Representations and Warranties. Seller hereby represents and warrants that each of the following is true as of the date of this Agreement and the Closing Date (except as otherwise set forth below):

(a) Neither the Tower nor its operation violates in any way any applicable laws, ordinances, rules, regulations, judgments, orders, or covenants, conditions and restrictions, whether federal, state, local, foreign or private. The Tower is not in violation of any applicable building or zoning codes, building moratorium or environmental protection codes, laws, regulations, or ordinances. Seller has not received any request, oral or written, that Seller modify or terminate any use of the Tower.

(b) As of the Closing Date, there will be no subleases, sublicenses or other occupancies or tenancies affecting the Tower or any portion thereof, except for the Existing Tower Sublease.



(c) There is no pending or threatened private or governmental litigation by any governmental authority or person against Seller relating to the Tower.

(d) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Seller or Seller's interest in the Tower, nor are any such proceedings contemplated by Seller.

(e) Seller has no knowledge of, nor has Seller received written notice of, any plan, study, or effort by any agency or party (other than Buyer) that in any way would materially affect the use of the Tower or any portion of it for its current use or of any intended public improvements that would result in any charge being levied against, or any lien assessed on, the Tower.

(f) Seller has received no notice of any presently pending or contemplated special assessments or proceedings to condemn or demolish the Tower or any part of it or any proceedings to declare the Tower or any part of it a nuisance.

(g) This Agreement and the performance of Seller's obligations under it and all documents executed by Seller that are to be delivered to Buyer at the Closing are, or on the Closing Date shall be, duly authorized, executed, and delivered by Seller and are, or at the Closing Date shall be, legal, valid, and binding obligations of Seller, and do not, and on the Closing Date shall not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Tower is subject. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, government agency, or other party is required for Seller to enter into and/or to perform Seller's obligations under this Agreement, except as has already been obtained. Seller is a limited liability company organized, validly existing, and in good standing under the laws of the State of Colorado and is qualified to do business in the State of Washington.

(h) Seller has good and marketable title to the Tower. Seller has no actual knowledge of any unrecorded or undisclosed legal or equitable interest in the Tower owned or claimed by anyone other than Seller. Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Tower, except as disclosed by this Agreement or otherwise in writing to Buyer. There are no unsatisfied mechanics' or materialmen's lien rights on the Tower. No assessment lien or bond encumbers the Tower, and no governmental authority has undertaken any action that could give rise to an assessment lien affecting the Tower.

(i) Seller is not a foreign person and is a "United States Person" as such term is defined in §7701(a)(30) of the Internal Revenue Code of 1986, as amended.

6.2 Survival of Representations and Warranties. Seller's representations and warranties set forth in this Agreement shall survive Closing for a period of one (1) year.

## SECTION 7

### **SELLER'S PRE-CLOSING COVENANTS**

7.1 No Leases or other Agreements. On or after the Effective Date, Seller shall not enter into any lease or other agreement of any type affecting the Tower that would survive the Closing Date, without Buyer's prior written consent.

7.2 Insurance. Through the Closing Date, Seller must maintain or cause to be maintained in full force and effect comprehensive general liability casualty and other insurance on the Tower in an amount equal to the full replacement cost of the Tower.

7.3 Mechanic's Liens. On or before the Closing, Seller must (a) pay for all materials, supplies, and work provided or ordered for the Tower for which a labor, materialman's, or mechanics' lien may be claimed under applicable law and (b) if required by the Title Company, provide the Title Company with such indemnifications or security as it may require to insure title to the Tower at the Closing without exception for any unrecorded labor, materialman's, or mechanics' claim of lien.

7.4 License and Permits. Seller shall use due diligence and its best efforts to keep in full force and effect, and shall renew, when necessary, all licenses and permits necessary for the operation of the Tower, including, without limitation, any licenses or permits issued by the FCC.

7.5 Service Contracts. Seller covenants and agrees that before the Closing Date it shall terminate all service contracts related to the Tower.

## SECTION 8

### **REMEDIES FOR DEFAULT**

8.1 Default by Buyer. If Buyer defaults in the performance of its material obligations hereunder and fails, without legal excuse, to complete the purchase of the Tower in accordance with the terms of this Agreement, Seller's sole and exclusive remedy shall be to retain the Initial Deposit and the Second Deposit (if applicable) as liquidated damages. Buyer expressly agrees that the delivery to and the retention of the Initial Deposit and the Second Deposit (if applicable) by Seller represents a reasonable estimation of the damages in the event of Buyer's default, that actual damages may be difficult to ascertain and that this provision does not constitute a penalty. Buyer shall be deemed to be in default under this Agreement if Buyer fails, for any reason other than Seller's default under this Agreement or the failure of a condition precedent to Buyer's obligation to perform under this Agreement, to meet, comply with, or perform any covenant,

agreement, or obligation required on its part within the time limits and in the manner required in this Agreement.

8.2 Default by Seller. If Seller fails, without legal excuse, to complete the sale of the Tower in accordance with the terms of this Agreement or otherwise defaults hereunder, Buyer may elect to pursue one of the following remedies: (a) terminate this Agreement and receive a refund of the Initial Deposit and the Second Deposit (if applicable); or (b) specifically enforce this Agreement.

## SECTION 9

### MISCELLANEOUS

9.1 Brokers. Each party represents and warrants to the other that no broker or finder has been involved in this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, Buyer, if such claim is based upon any acts, dealings or agreements alleged to have been made by Buyer, shall indemnify, defend, protect and hold harmless, Seller against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim; or Seller, if such claim is based upon any acts, dealings or agreements alleged to have been made by Seller, shall indemnify, defend, protect and hold harmless, Buyer against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this Section 9.1 shall survive the termination of this Agreement or the Closing.

9.2 Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered personally, (ii) sent by a nationally recognized overnight delivery service, (iii) sent by electronic mail prior to 5:00 p.m. on the day of delivery (provided an additional copy is sent by another approved method in this Section 9.2) or (iv) mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Buyer:

Pierce Transit  
 3701 - 96<sup>th</sup> Street SW  
 Lakewood, Washington 98499  
 Attention: Dana A. Henderson, General Counsel  
 Phone: (253) 777-4977  
 Email: [dhenderson@piercetransit.org](mailto:dhenderson@piercetransit.org)

Seller:

PRC Tacoma –I LLC  
c/o Erin Moran, CFO/CAO  
5277 Manhattan Circle #210  
Boulder, CO 80303  
Phone: (720) 304-7274  
Email: [erin@publicmedia.co](mailto:erin@publicmedia.co)

With a copy (which shall not constitute notice) to:

John Crigler, Esq.  
Garvey Schubert Barer  
Fifth Floor  
1000 Potomac Street, N.W.  
Washington, D.C. 20007  
Phone: (202) 965-7880  
Email: [jcrigler@gsblaw.com](mailto:jcrigler@gsblaw.com)

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

9.3 Amendment, Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement. No failure by Seller or Buyer to insist upon the strict performance of any covenant, agreement, or condition of this Agreement or to exercise any right or remedy shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Seller's or Buyer's permitted successors and assigns.

9.4 Survival. All provisions of this Agreement which involve obligations, duties or rights to be performed after the Closing Date, and all representations and warranties made in or to be made pursuant to this Agreement, shall survive the Closing Date; provided, however, such survival shall be limited to the extent expressly provided herein.

9.5 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

9.6 Governing Law; Time. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Washington without regard to any choice of law principles. "Day" as used herein means a calendar day and "business day" (whether or not capitalized) means any day other than a Saturday, Sunday or any holiday on which commercial banks in the State of Washington are generally open for business. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day.

9.7 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such provisions had not been contained herein.

9.8 Counterparts. This Agreement and the documents to be delivered hereunder may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Facsimile and pdf copies of this Agreement or such counterparts shall be deemed duly executed and delivered original instruments.

*Signatures Appear on Following Page*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their proper officers.

SELLER:

PRC Tacoma – I LLC

By: \_\_\_\_\_  
Marc Hand  
Authorized Representative

BUYER:

Pierce County Public Transportation Benefit Area  
Corporation

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

EXHIBIT A

Legal Description

The northwest quarter of Government Lot 2 in Section 14, Township 21 North, Range 3 East of the W.M., in Pierce County, Washington.

## **TOWER SITE LEASE AGREEMENT**

This Tower Site Lease Agreement (this “**Lease**”) made as of \_\_\_\_\_, 2015 (the “**Effective Date**”) by and between PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation (“**Lessee**”), with a principal place of business located at 3701 96<sup>th</sup> Street SW, Lakewood, Washington 98499, and IWG TOWERS ASSETS I, LLC., a Delaware limited liability company (“**Lessor**”), f/k/a CTI Towers Assets I, LLC, as successor in interest to CTI Towers, Inc., with a principal place of business located at 1199 N. Fairfax Street, Suite 700, Alexandria, VA 22314.

WHEREAS, Lessor owns fee title to the land located at 4917 37<sup>th</sup> Avenue NE, Tacoma, Washington, and more particularly described on Exhibit A attached hereto (“**Lessor’s Property**”); and

WHEREAS, PRC Tacoma-I, LLC, a Colorado limited liability company (“**PRC**”), previously owned a 450-foot telecommunications tower (the “**Existing Tower**”) located on a portion of the Lessor’s Property, which Existing Tower was permitted by Lessor pursuant to a Tower Site License Agreement dated January 1, 2013, between Lessor and PRC (the “**PRC License Agreement**”); and.

WHEREAS, effective concurrently with commencement of this Lease, Lessee has acquired the Existing Tower from PRC, together with all of PRC’s right, title and interest in and to any other improvements located on Lessor’s Property; and

WHEREAS, in connection with the acquisition of the Existing Tower by Lessee, PRC and Lessor have agreed to terminate the PRC License Agreement; and

WHEREAS, Lessee desires to lease from Lessor, and Lessor desires to Lease to Lessee, the site on which the Existing Tower is located as well as surrounding portions of Lessor’s Property as described on Exhibit B, together with any and all existing improvements thereon to the extent such improvements are owned by Lessor (collectively, the “**Premises**”), all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

1. **DELIVERY OF PREMISES.** Lessor hereby leases to Lessee, and Lessee hereby accepts from Lessor, the Premises in their currently existing, as-is condition. In addition, Lessor hereby grants Lessee, on a non-exclusive basis, the right to access and use those portions of Lessor’s Property necessary for the access and use of the Premises for the purposes permitted under this Lease, including, without limitation, the right of pedestrian and vehicular ingress and egress over any road or driveways on Lessor’s Property, the right to park vehicles in any areas of Lessor’s Property designated or used for such purpose and the right to run utility lines to and from the Premises. Lessor shall maintain those portions of Lessor’s Property necessary for access to and the use and operation of the Premises in good condition and repair.



2. **TERM.** The Premises shall be delivered to Lessee and the term of this Lease shall commence on the later to occur of the Effective Date or the date upon which Lessee closes upon the acquisition of the Existing Tower (the “**Commencement Date**”), and shall expire on the last day of the one hundred twentieth (120<sup>th</sup>) full calendar month following the Commencement Date (the “**Term**”). If the Commencement Date occurs on a day other than the first day of a calendar month, then the first year of the Term shall be deemed to include such partial month and the twelve (12) full calendar months thereafter. Lessee may extend the Term at Lessee’s option for up to four (4) additional consecutive periods of five (5) years each (each, an “**Extended Term**”). Lessee’s option for each Extended Term shall be deemed automatically exercised, unless Lessee gives Lessor written notice of its intent not to exercise its option for the next Extended Term not less than one hundred eighty (180) days prior to the expiration of the then-current Term. Upon exercise or deemed exercise by Lessee of the option to extend the Term for an Extended Term, such Extended Term shall be deemed included in the “**Term**” for all purposes under this Lease. Notwithstanding the foregoing, Lessee shall have no option to extend the Term if there is an outstanding Lessee Default as of the last day of the then-current Term.

3. **RENT.**

(a) In addition to all other costs, charges and expenses that it is required to pay hereunder, Lessee shall pay to Lessor rent for the Premises in the amount of Twenty-Six Thousand Four Hundred and No/100 Dollars (\$26,400.00) per annum (“**Base Rent**”) for the first full year of the Term. Said Base Rent shall be payable monthly, in advance, in equal installments of Two Thousand Two Hundred and No/100 Dollars (\$2,200.00) beginning on the Commencement Date and subsequent installments will be payable on the first day of each successive calendar month of the Term. If the Commencement Date occurs on a day other than the first day of the calendar month, then Base Rent for such first calendar month shall be prorated based on the number of days from and including the Commencement Date through the last day of such calendar month bears to the total number of days in such calendar month. Base Rent shall be increased in each subsequent year of the Term accordance with the provisions of Section 3(b).

(b) Beginning with the first day of the thirteenth (13<sup>th</sup>) full calendar month of the Term, and on the same date in each subsequent year of the Term, Base Rent shall increase annually by three percent (3%).

(c) In the event Lessee shall fail to pay the Base Rent reserved herein or any other amounts due hereunder within ten (10) days after the date when due, said delinquent Base Rent or other amount shall bear interest at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate allowed by law (the “**Default Interest Rate**”), from the due date thereof until paid.

4. **USE AND OWNERSHIP OF IMPROVEMENTS.**

(a) Subject to the provisions and conditions hereof, Lessee shall have the exclusive right to use the Premises for purposes of construction, maintaining and operating the Tower and other Facilities (as such terms are hereinafter defined) for purposes of receiving and transmitting radio signals and other forms of communication and uses ancillary thereto (the “**Permitted Use**”), all in accordance with applicable law, including rules and regulations of the Federal Communications Commission (“**FCC**”). Lessee shall obtain and maintain all necessary approvals, permits, licenses and authorizations and provide copies of same to Lessor upon request. Lessee shall not use the Premises for any other purpose without the prior written consent of Lessor. Lessee shall be responsible for grounding all external and internal electrical wiring installed by Lessee. Lessee shall obtain Lessor’s prior written approval, which approval shall not be unreasonably withheld, of Lessee’s grounding plans.

(b) In addition to the Existing Tower, the Premises include certain additional existing improvements, fixtures and equipment that are ancillary to and support the operation of the Tower (collectively, together with any renewals and replacements thereof and additions thereto, the “**Facilities**”). In connection with its acquisition of the Existing Tower, Lessee received from PRC a quitclaim deed conveying to Lessee all of PRC’s interest in the existing Facilities, to the extent the same constitute real property, and a bill of sale conveying to Lessee all of PRC’s interest in the existing Facilities, to the extent the same constitute personal property. Lessor and Lessee agree that, as between Lessor and Lessee, the Facilities are the property of Lessee, subject to the rights of Lessor set forth herein in accordance with Section 15(f). Lessee may maintain, repair, upgrade, replace, modify, alter, or remove any portion of the Tower or Facilities at any time, with prior written notice to Lessor, provided any such work is performed in accordance with all applicable laws.

(c) Lessee presently intends, but shall not be obligated to, replace the Existing Tower with a new tower (the “**New Tower**”; and the Existing Tower or the New Tower, as applicable from time to time, the “**Tower**”), provided that the fabrication and erection of the New Tower, as well as the removal and disposal of the Existing Tower, shall be performed by Lessee at Lessee’s expense. In connection with the erection of the New Tower, Lessee presently intends, but shall not be obligated, to make modifications to the existing Facilities, which may include building a new structure on the Premises and demolishing the existing structure. At least sixty (60) days prior to commencing any work on the New Tower, Lessee shall notify Lessor and deliver to Lessor a complete set of working drawings (the “**Working Drawings**”) setting forth the plans and specifications for the New Tower and the installation and erection thereof, as well as the plans for the removal of the Existing Tower. Such Working Drawings shall be subject to the approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall, at Lessor’s request and on reasonable advance notice from Lessor, make available Lessee’s project manager, general contractor and any engineer involved in the preparation of the Working Drawings for consultations with Lessor. If Lessor does not grant its approval of the Working Drawings or provide to Lessee reasonable comments to such Working Drawings within thirty (30) days following Lessee’s submittal thereof, Lessor shall be deemed to have approved such Working

Drawings. If Lessor delivers reasonable comments to the Working Drawings, Lessor and Lessee shall cooperate in good faith to modify such Working Drawings to address such comments, and Lessor shall not unreasonably withhold, condition or delay its approval of such revised Working Drawings. Upon Lessor's approval or deemed approval of the Working Drawings, the approved version of the Working Drawings shall be the "**Approved Working Drawings**." Upon approval of the Approved Working Drawings, Lessee may, but shall not be obligated, to perform all or any portion of the work contemplated by such Approved Working Drawings, which may be conducted in one or more phases. All such work shall be performed by Lessee or a licensed contractor on behalf of Lessee and shall be performed in a good and workmanlike manner and in accordance with the Approved Working Drawings and applicable law. In the event that Lessor withholds consent to any Working Drawings proposed by Lessee and Lessee believes such consent has been withheld unreasonably, Lessee's sole remedy shall be to pursue an action for injunctive relief; provided that, if Lessee's action for injunctive relief is successful, Lessee shall be entitled to recover from Lessor its reasonable attorney's fees and disbursements in connection with such action. Lessee's initial plans for the New Tower and related improvements are attached hereto as Exhibit C, and are provided for informational purposes only, but are not approved or deemed approved by Lessor.

5. **PERMITS.** Lessee shall at Lessee's sole expense obtain and maintain throughout the Term all federal, state, and local licenses, permits and authorizations to construct, install and operate the Tower and Facilities ("**Government Approvals**"). Lessor makes no representation that Lessee will be able to obtain the Government Approvals or that the Premises are suitable for Lessee's intended purposes. In the event any Government Approval required by Lessee or Lessor, through no fault of Lessee, is denied or is canceled, expires, or is otherwise withdrawn or terminated so that the Premises becomes unusable by Lessee and Lessee is unable to cure or renew such government approvals within one hundred eighty (180) days of denial, cancelation, expiration, or termination, then this Lease may be terminated by either party without further liability, except payment of Base Rent and all other monetary obligations owed to Lessor and accrued as of the date of termination. Lessor shall reasonably cooperate, without the obligation to incur any expenses, with Lessee in obtaining and maintaining any Government Approvals with respect to installation of the New Tower and any modifications to the Facilities.

6. **ACCESS.**

(a) Lessor acknowledges that Lessee is a public entity and that, in accordance with Section 18, the Premises and the Tower may be used by other public entities, including law enforcement agencies, for public safety communications. As a result, the Premises may be subject to laws, rules and regulations, as well as contractual obligations on the part of Lessee to third parties, regarding security of public property and communications and public safety infrastructure. Therefore, subject to Lessor's rights of access set forth in Section 6(b), Lessee shall have exclusive possession of the Premises, including the Tower and the Facilities, and shall have the sole right to exclude from the Premises any individual who has not been authorized by Lessee to access the Premises. Lessee may, at Lessee's expense, install a fence or other barrier to enclose all or any portion of the Premises, provided that

Lessee shall provide Lessor with a copy of any keys or access codes necessary to access the Premises and any Facilities.

(b) Notwithstanding Section 6(a), Lessor, or its officers, employees, agents or contractors, may, upon at least forty-eight (48) hours prior written notice to Lessee, enter on the Premises at any time to exercise any rights expressly granted or reserved to Lessor hereunder; provided that any individual accessing the Premises on behalf of Lessor shall, at Lessee's discretion, be accompanied by an employee of Lessee or a third party designated by Lessee for such purpose. Notwithstanding the foregoing, if Lessor reasonably determines that a condition exists in or around the Premises that poses imminent risk of injury or material property damage (an "**Emergency Condition**"), such that providing prior written notice of entry to the Premises would be unreasonable under the circumstances, Lessor may enter the Premises without providing such prior written notice, provided that Lessor shall make every reasonable effort to contact an authorized officer or employee of Lessee to notify Lessee of such Emergency Condition prior to or as soon as practicable following such entry.

7. **UTILITIES.** Lessee shall furnish and shall bear the cost of all power, utilities and any other services needed to operate or maintain the Tower and the Facilities. Lessee shall install, unless prohibited by law or unavailable at the Premises, at its own cost, a separate electrical panel and meter for the Tower and the Facilities. Lessee further agrees that Lessor has no obligation or responsibility to provide emergency or "backup" power to Lessee, and Lessee acknowledges that any such provision of emergency or "backup" power shall be the sole responsibility of Lessee.

8. **INTERFERENCE.**

(a) **Interference by Lessee.** Should Lessee use of the Tower or the Facilities cause or contribute to interference with the operation of other equipment operating on Lessor's Property as of the Effective Date (the "**Existing Uses**"), Lessee agrees, at its own expense, to take all steps necessary to correct and eliminate the interference. In the event of such interference by Lessee's use, Lessor shall notify Lessee of the same by contacting Lessee pursuant to the notice provision in this Lease (an "**Interference Notice**"). Lessee shall acknowledge the Interference Notice within twelve (12) hours and shall make commercially reasonable efforts to remedy the interference within forty-eight (48) hours of receipt of the Interference Notice. In the event Lessee does not remedy the interference within seventy-two (72) hours of receipt of the Interference Notice, Lessee shall be deemed to be in default of this Lease. Lessee shall have ten (10) days from receipt of written notice of such default from Lessor to cure such default. If the interference does not cease within such ten (10) day period, Lessor may, in Lessor's sole discretion, require Lessee to terminate its operations on seventy-two (72) hours of notice from Lessor. Notwithstanding the foregoing, if Lessee is using best practices in the industry to resolve the interference and diligently prosecutes its efforts to successful resolution, then Lessor shall cooperate with Lessee in resolving the interference and Lessee shall not be in default under this Lease as long as Lessee continues to diligently prosecute such efforts. Notwithstanding the foregoing, Lessor acknowledges that Lessee

has been operating at the Premises since 2007 pursuant to a lease from PRC and (i) Lessor has no actual knowledge of, and has not received any notice from any other user of Lessor's Property of, any such interference.

(b) **Interference to Lessee's Operations.** Lessor agrees that, except for Existing Uses, Lessor shall not, and shall not permit any other user of Lessor's Property, to operate equipment on Lessor's Property in a manner that causes radio frequency interference or otherwise unreasonably interferes with Lessee's Permitted Use or the operation of the Tower and the Facilities by Lessee. In the event Lessee experiences radio frequency interference or other unreasonable interference resulting from any use of Lessor's Property, other than from Existing Uses, Lessee shall notify Lessor in writing of such interference. Lessor shall use reasonable efforts, at its expense, to cause such other user to correct such interference. If such interference is not resolved within seventy-two (72) hours of Lessor's receipt of Lessee's notice, Lessor shall use reasonable efforts, at its expense, to cause the interfering use of Lessor's Property to terminate immediately and such use shall not be permitted to resume until such interference is resolved.

## 9. INDEMNIFICATION.

(a) **Lessee Indemnification.** Lessee agrees to defend, indemnify and hold harmless Lessor and its officers, directors, employees, agents and contractors (the "**Lessor Indemnified Parties**") from any claim, expense, loss or damage of any kind, including reasonable attorney's fees, arising from Lessee's installation, operation or maintenance of the Tower and the Facilities, any other use of the Premises by Lessee, or the breach of any provision of this Lease, excepting, however, such claims or damages as may be due solely to the negligence or willful misconduct of any Lessor Indemnified Party. Lessee indemnifies and saves the Lessor Indemnified Parties harmless from and against all loss, cost, damage, liability, and expense, including reasonable attorneys' fees, arising from injury or death of any person or damage to property in and about the Premises, excepting, however, such claims or damages as may be due to the negligence or misconduct of any Lessor Indemnified Party. Lessee shall pay on demand, and shall indemnify and save the Lessor Indemnified Parties harmless from, all amounts paid by any Lessor Indemnified Party for all loss, cost, damage, liability, and expense, including reasonable attorneys' fees and court costs, incurred in the successful enforcement by any Lessor Indemnified Party of any obligation of Lessee hereunder. Except for any claims for which Lessee is entitled to indemnification from Lessor pursuant to Section 9(b), Lessee shall bear the sole risk of loss, damage or injury to or from the Tower, Facilities and personal property of every kind in or upon the Premises. The provisions of this Section 9(a) shall survive termination or expiration of this Lease.

(b) **Lessor Indemnification.** Lessor agrees to defend, indemnify and hold harmless Lessee and its officers, directors, employees, agents and contractors (the "**Lessee Indemnified Parties**") from any claim, expense, loss or damage of any kind, including reasonable attorney's fees, arising from Lessor's installation, operation or maintenance of Lessor's equipment on Lessor's Property, any other use of Lessor's Property by Lessor, or the breach of any provision of this Lease, excepting, however, such claims or damages as

may be due solely to the negligence or willful misconduct of any Lessee Indemnified Party. Lessor indemnifies and saves the Lessee Indemnified Parties harmless from and against all loss, cost, damage, liability, and expense, including reasonable attorneys' fees, arising from injury or death of any person or damage to property in and about the Premises to the extent the same result from the negligence or misconduct of any Lessor Indemnified Party. Lessor indemnifies and saves the Lessee Indemnified Parties harmless from and against all loss, cost, damage, liability, and expense, including reasonable attorneys' fees, arising from injury or death of any person or damage to property in and about the Lessor's Property (but excluding the Premises), excepting, however, such claims or damages as may be due to the negligence or misconduct of any Lessee Indemnified Party. Lessor shall pay on demand, and shall indemnify and save the Lessee Indemnified Parties harmless from, all amounts paid by any Lessee Indemnified Party for all loss, cost, damage, liability, and expense, including reasonable attorneys' fees and court costs, incurred in the successful enforcement by any Lessee Indemnified Party of any obligation of Lessor hereunder. The provisions of this Section 9(b) shall survive termination or expiration of this Lease.

(c) **Limitations.** The foregoing indemnities shall run to the parties specified in the capacities specified and shall not affect the rights or obligations of Lessor or Lessee, or their respective officers, directors, employees, agents or contractors in their individual capacities, except as specified herein. The indemnification obligations contained in this Section 9 shall not be limited by any worker's compensation, benefit or disability laws. Lessor and Lessee each hereby expressly and specifically agree that it shall not assert as to such indemnity obligation any limitations or immunity that such party may have under the Washington Industrial Insurance Act, RCW Title 51 similar worker's compensation, benefit or disability laws. Each party's agreement not to assert limitations or immunity under such laws extends only to claims brought by the other party and does not extend to claims by such party's employees against such party. Each party agrees that this agreement was specifically bargained for as part of the Lease consideration. Furthermore, notwithstanding anything to the contrary in this Section 9, Lessor and Lessee hereby expressly and specifically agree that, to the extent any claim giving rise to an indemnification obligation under this Lease relates to the construction or any other activity described in RCW 4.24.115, then no party shall be entitled to indemnification for its sole negligence and, to the extent any such claim results from the concurrent negligence of Lessor and/or Lessor's agents or employees and Lessee and/or Lessee's agents or employees, then the party entitled to indemnification hereunder shall only be entitled to indemnification to the extent of the indemnifying party's negligence.

## 10. **INSURANCE.**

(a) **Lessee's Insurance.** Lessee shall procure prior to the Effective Date and shall keep in effect throughout the Term:

i. Commercial General Liability Insurance Covering Operations and Premises Liability; Contractor's Protective Liability; Completed Operations; Product Liability; Contractual Liability; Personal Injury; and Property Damage caused by explosion,

collapse and underground damage; Broad-Form Property Damage Endorsement; and Employer's Liability Insurance. The limits of such liability insurance shall be no less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate;

ii. To the extent required by law, Lessee shall acquire and maintain Worker's Compensation in statutory amounts with combined limits of One Million Dollars (\$1,000,000); provided, however, Lessee may instead elect to self-insure for worker's compensation insurance so long as Lessee is a public entity;

iii. Umbrella Excess Liability; Coverage on a follow-form basis in an amount no less than Two Million Dollars (\$2,000,000) for each occurrence; and

iv. "All-Risks" Property Insurance: Property Insurance covering all risks of physical damage (subject to standard exclusions) and including, but not limited to, sprinkler leakage and water damage to contractors' materials, equipment, supplies, personal property, removable trade fixtures and equipment. Coverage is to be on a replacement cost basis and is to include the interests of Lessor, as its interests may appear.

All such insurance shall be carried with companies with a minimum A.M. Best Rating of A-VII, licensed to do business in the State of Washington, and, in the case of the liability policies, shall name the Lessor as an additional insured parties. All such insurance shall be primary and non-contributory to any insurance policies maintained by Lessor and shall provide a waiver of subrogation in favor of Lessor where permitted by law.

Lessee agrees that Lessor may, from time to time during the Term, require that additional insurance be obtained and maintained in amounts reasonably related to use of the Premises.

Each insurance policy required hereunder, shall be endorsed to provide that it will not be canceled or amended except after prior written notice in accordance with policy provisions to Lessor, delivered to the address indicated herein, and the policy and policy endorsements shall contain the following endorsement: "It is hereby understood and agreed that any material change to this policy, cancellation of this policy, or the intention not to renew the policy shall not be effective unless notice thereof has been provided to Lessor by registered mail without prior written notice in accordance with policy provisions to such change, cancellation or non-renewal."

In the event of any cancellation or any policy change not acceptable to Lessor, Lessor reserves the right to provide replacement insurance coverage and to charge any reasonable premium expense therefor to Lessee and to deduct such cost from any amounts due or to become due to Lessee hereunder.

The liability of Lessee shall not be limited by said insurance policies or the recovery of any amounts thereunder.

Notwithstanding anything to the contrary herein, all of the coverages required to be maintained by Lessee hereunder may be maintained pursuant to a program of self-insurance pool such as the Washington State Transit Insurance Pool, or any successor or replacement program, provided that the coverage limits satisfy the thresholds set forth in this Section 10(a). In lieu of providing certificates or policies of insurance as set forth in this Section 10(a), Lessee may provide to Lessor evidence of participation in such program together with evidence of coverage reasonably acceptable to Lessee.

(b) **Lessor's Insurance.** Lessor shall maintain general liability insurance insuring against liability for bodily injury, death or damage to personal property with combined single limits of One Million Dollars (\$1,000,000). In addition, to the extent required by law, Lessor shall maintain worker's compensation in statutory amounts and employer's liability insurance with combined single limits of One Million Dollars (\$1,000,000). Lessor shall provide Lessee with evidence of such insurance in the form of a certificate of insurance prior to Lessee obtaining occupancy and throughout the Term.

(c) **Waiver of Subrogation.** Lessor and Lessee each waive any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy that covers Lessor's Property, the Premises, Lessor's or Lessee's fixtures, personal property or business, or is required to be insured against under the terms hereof, regardless of whether the negligence of the other party caused such loss. Lessor and Lessee each hereby waive any right of subrogation and right of recovery or cause of action for injury including death or disease to respective employees of either as covered by Worker's Compensation (or which would have been covered if Lessor or Lessee, as the case may be, was carrying the insurance as required by this Lease). Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.

11. **CONDEMNATION.** If all or substantially all of the Premises shall be taken by any public authority under the power of eminent domain or conveyed in lieu thereof (in either case, a "**Taking**"), then this Lease shall terminate effective as of the date that title to the Premises is conveyed to the condemning authority. If there is a Taking of less than all or substantially all of the Premises and, in the reasonable determination of Lessee, the remaining portion of the Premises is no longer suitable for the Permitted Use, or if the cost of adapting the remaining portion of the Premises for continued use for the Permitted Use would be prohibitive, then Lessee shall have the right to terminate this Lease upon written notice to Lessor delivered within thirty (30) days following the date notice is received of such taking, which terminations shall be effective as of the date that title to the Premises is conveyed to the condemning authority.

12. **GROUND RIGHTS.**



(a) Lessee accepts this Lease subject and subordinate to any ground lease, mortgage, deed of trust, easement or other lien presently existing or hereafter arising upon Lessor's Property, and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Lessee agrees that any such ground lessor or mortgagee (as the case may be) shall have the right at any time to subordinate such ground lease, mortgage, deed of trust or other lien (as the case may be) to this Lease on such terms and subject to such conditions as such ground lessor or mortgagee may deem appropriate in its discretion. Notwithstanding the foregoing, the subordination of this Lease to any ground lease, mortgage, deed of trust or other lien first placed upon or encumbering Lessor's Property following the Effective Date shall be conditioned upon the lessor or holder thereof delivering to Lessee a commercially reasonable non-disturbance agreement pursuant to which such lessor or holder agrees that, so long as no Lessee Default is continuing at the time such lessor or holder acquires title to Lessor's Property, such lessor or holder shall not disturb Lessee's rights of occupancy and quiet enjoyment of the Premises. This provision is hereby declared to be self-operative and, except as set forth above, no further instrument shall be required to effect such subordination of this Lease.

(b) Subject to Section 12(a), this Lease and all of Lessee's rights hereunder are and shall be expressly subject and subordinate to all of the terms, covenants, and conditions contained in all deeds, easements, restrictions, covenants, encumbrances, or other matters of record to which the Premises are subject (the "**Title Encumbrances**"). Lessee covenants and agrees to comply with all covenants, conditions and restrictions applicable to the use and occupancy of the Premises under the Title Encumbrances existing as of the Effective Date, as well as any Title Encumbrances first arising following the Effective Date, provided that such future Title Encumbrances do not prohibit or unreasonably impede the use of the Premises for the Permitted Use and compliance therewith does not impose any additional monetary or material non-monetary burdens upon Lessee.

13. **WAIVER.** No provision of this Lease will be deemed to have been waived by either party unless the waiver is in writing and signed by the party against whom enforcement is attempted.

14. **DEFAULT.**

(a) Each of the following events shall be deemed to be an event of default by Lessee ("**Lessee Default**") or Lessor ("**Lessor Default**"), as the case may be:

i. If Lessee shall default in the payment of any Base Rent hereunder and such default shall continue for a period of fifteen (15) days after receipt of written notice from Lessor;

ii. If Lessee shall default in the payment of any other sum due Lessor hereunder and such default shall continue for a period of fifteen (15) days after receipt of written notice from Lessor;

iii. Except where different cure periods are expressly provided in this Lease to the contrary, if Lessee or Lessor shall default in the observance or performance of any of its non-monetary obligations under this Lease and such default shall continue for more than thirty (30) days after receipt of written notice of such default by the defaulting party, provided, however, that if such default is capable of being cured but not within such thirty (30) day period, the party in default shall have such additional period of time as may be reasonably necessary to complete the cure of such default so long as such party has commenced and thereafter diligently prosecutes such cure to completion;

iv. If Lessee or Lessor shall fail to comply with environmental provisions in Section 22;

v. If Lessee or Lessor default in their respective obligations under Section 8 and such default is not cured or otherwise addressed within the time periods set forth therein;

vi. The filing, execution, or occurrence of a petition in bankruptcy or other insolvency proceeding by a party; a voluntary assignment for the benefit of creditors by a party; or a petition or proceeding by a party for the appointment of a trustee, receiver or liquidator for the assets of such party; or

vii. The filing, execution, or occurrence of a petition in bankruptcy or other insolvency proceeding against a party; or a petition or proceeding against a party for the appointment of a trustee, receiver or liquidator for the assets of such party; or the commencement of a proceeding by any governmental authority for the dissolution or liquidation of a party, shall each constitute a default by that party; in each case, to the extent the same is not dismissed or discharged within ninety (90) days of the filing or commencement thereof.

## 15. **REMEDIES; TERMINATION.**

(a) **Withdrawal or Termination of Approval or Permit.** In the event any previously approved zoning or other required permit or license issued to Lessor or Lessee and necessary for the use of the Premises by Lessee for the Permitted Use is withdrawn or terminated despite the diligent efforts of the respective party (and good faith cooperation of the other party where applicable), then either party shall have the option to terminate this Lease on one hundred twenty (120) days prior written notice to the other party; provided, however, if the other party is able to obtain such zoning or other required permit or license sufficient to allow the continued or renewed use of the Premises by Lessee for the Permitted Use prior to the effective date of such termination, then such party may, at its option, elect to nullify the termination notice delivered by the terminating party, in which case this Lease shall continue in full force and effect.

(b) **Termination for Non-appropriation.** Lessee is a public entity and, as such, Lessee's ability to perform its obligation under any contract is contingent upon the

availability of appropriated funds from which payment for contract purposes can be made. In the event funds from any source are reduced or withdrawn, or limited in any way, Lessee may terminate this Lease upon written notice to Lessor.

(c) **Termination by Lessee.** Lessee may terminate this Lease on thirty (30) days prior written notice to Lessor if there exists a Lessor Default and Lessor fails to cure such Lessor Default prior to the expiration of such thirty (30) day period.

(d) **Termination or Reentry by Lessor.** If there exists a Lessee Default and Lessee fails to cure such default within thirty (30) days after receipt of written notice from Lessor, Lessor may:

i. immediately or at any time thereafter, pursuant to summary eviction or other legal proceedings, enter into and upon the Premises or any part thereof and repossess the same as of its former estate, without terminating this Lease, and expel Lessee and those claiming through or under it and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; upon entry without terminating this Lease, Lessor may relet the Premises for the account of Lessee and, in such event, Lessee shall be entitled to a credit against its Base Rent obligations hereunder in the amount of rents received by Lessor from any such reletting of the Premises applicable to the unexpired Term; or

ii. terminate this Lease and demand payment of an amount equal to the excess of the balance of all Base Rent due or to become due throughout the then current Term over the fair market rental value of the Premises.

(e) **Right to Cure Defaults.** Following the occurrence of a Lessor Default or a Lessee Default, the non-defaulting party may, but shall not be obligated to, make any payment or perform or otherwise cure any obligation, provision, covenant or condition on the defaulting party's part to be observed or performed. Any such actions undertaken by a non-defaulting party shall not be deemed a waiver of the non-defaulting party's rights and remedies as a result of the default and shall not release the defaulting party from any of its obligations under this Lease. Any expenses incurred by the non-defaulting party in connection with such payment or performance on behalf of the defaulting party shall be reimbursed by the defaulting party upon written demand by the non-defaulting party and shall bear interest at the Default Interest Rate from and after the date of demand until the date of payment. Any amounts owed to a non-defaulting party under this Section 15(e) may be offset by such non-defaulting party against obligation owed by such non-defaulting party to the defaulting party under this Lease.

(f) **Removal of Property upon Termination.** Within sixty (60) days following the expiration or earlier termination of this Lease (the "**Termination Date**"), Lessee shall, at Lessee's sole cost and expense, without liens, remove the Tower, the Tower foundation to three feet (3') below grade, any Facilities constructed or installed by or on behalf of Lessee and all of Lessee's personal property (collectively, the "Removal

Property”) from the Premises. In the event Lessor does not remove all of the Removal Property within sixty (60) days after the Termination Date, then any remaining Removal Property may, at Lessor’s sole option, (i) be removed and stored or disposed of by Lessor at Lessee’s expense, or (ii) become the property of Lessor without compensation to Lessee. In the event Lessee elects to become the owner of any remaining Removal Property, Lessee shall, at Lessor’s option and at no cost to Lessor, provide Lessor with: (i) a quitclaim deed conveying to Lessor all of Lessee’s right, title and interest in the remaining Removal Property, to the extent the same constitute real property, and a bill of sale conveying to Lessor all of Lessee’s right, title and interest in the remaining Removal Property, to the extent the same constitute personal property; and (ii) an assignment to Lessor of all subleases and sublicenses related to the Premises.

(g) **Holdover.** Lessee shall not have the right to hold over in occupancy of the Premises following the Termination Date and Lessor may exercise any and all remedies at law and in equity to recover possession of the Premises, as well as any damages incurred by Lessor due to Lessee’s failure to vacate the Premises and deliver possession to Lessor as required by this Lease. If Lessee holds over after the Termination Date, Lessee shall be deemed a tenant at sufferance, at daily rent equal to one hundred twenty five percent (125%) of the daily Base Rent payable immediately prior to the Termination Date.

(h) **Survival.** The provisions of this Section 15 shall survive termination or expiration of this Lease.

16. **LIENS.** Lessee shall not suffer or cause the filing of any lien against Lessor’s Property. Lessee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Lessee. Lessee shall also indemnify, hold harmless and defend Lessor against any such liens, including the reasonable fees of Lessor’s attorneys. Such liens shall be discharged by Lessee within thirty (30) days after notice of filing thereof by bonding, payment or otherwise. Lessee shall not do anything in or about the Premises or Lessor’s Property that will in any way tend to increase the insurance rates on Lessor’s Property. Lessee agrees to pay as additional rent any increase in premiums for insurance that may be charged during the Term on the amount of insurance to be carried by Lessor on Lessor’s Property, resulting directly from the activities of Lessee on the Premises, whether or not Lessor has consented to same. The provisions of this Section 16 shall survive termination or expiration of this Lease.

17. **COMPLIANCE WITH LAWS.** Lessee covenants and agrees to use the Tower and the Facilities, to conduct its business and operations at the Premises, and to cause the Tower and the Facilities to be in compliance with, all applicable present and future federal, state and local statutes, codes, rules, regulations, and ordinances, and all present and future requirements of common law (together “Laws”) including but not limited to those of the FCC and the American National Standards Institute (“ANSI”).

18. **ASSIGNMENT AND SUBLETTING.**

(a) This Lease may not be assigned, sold, transferred, conveyed in any other manner transferred by Lessee, without the prior written consent of Lessor, which may be withheld at Lessor's sole discretion.

(b) Notwithstanding the foregoing, Lessee shall have the right, without Lessor's consent, but upon advance written notification to Lessor, to assign this Lease to any governmental or quasi-governmental entities or agencies that will use the Tower and the Facilities exclusively for public safety communications, or to any third party that contracts with any such governmental or quasi-governmental entity or agency, including, without limitation, Pierce County, that will use the Tower and the Facilities exclusively for public safety communications (any of the foregoing, a "**Public Safety User**"). Any such assignee shall be bound by the terms and conditions of this Lease. As of the Effective Date, the Public Safety Users are as set forth in Exhibit D.

(c) Lessee shall have the right, without Lessor's prior written consent, but upon advance written notification to Lessor, to sublease space on the Tower and in the Facilities to any Public Safety User, provided sufficient space is available to accommodate such Public Safety User. Lessee shall provide Lessor with a copy of each fully-executed sublease within ten (10) days of execution. In addition, and for the avoidance of doubt, other Public Safety Users may transmit from the Tower using equipment owned and installed on the Tower and in the Facilities by Lessee pursuant to this Lease, and such use shall not be deemed to constitute an assignment or a sublease or be deemed to impose any obligations upon such Public Safety Users under this Lease.

(d) Except for subleases to Public Safety Users permitted under Section 18(c) and to those Third-Party Users set forth in Exhibit D, Lessee shall not sublease all or any portion of the Premises, including any space on the Tower or in the Facilities without the prior written consent of Lessor, which may be withheld at Lessor's sole discretion.

(e) Nothing herein shall preclude or prevent the sale, transfer or assignment by Lessor of all or part of Lessor's Property. Notwithstanding the foregoing, Lessee will not be bound by such sale, transfer, or assignment until Lessor shall have provided Lessee written notification of such a sale, transfer or assignment. The obligations of Lessor under this Lease accruing from and after the date of the sale, assignment or other transfer shall no longer be binding upon Lessor in the event that Lessor sells, assigns or otherwise transfers its interest in Lessor's Property.

(f) Lessor may from time to time request that Lessee license to Lessor presently unused space ("Licensed Space") on the Tower to Lessor to be sublicensed to third party users. Lessee may approve or reject any such request to license Licensed Space on the Tower in Lessee's sole and absolute discretion, and Lessor acknowledges that, among other things, Lessee may elect to give priority to the actual or potential uses of Lessee and other Public Safety Users in making a determination as to whether to grant any such license. If Lessee agrees to license Licensed Space to Lessor, Lessor and Lessee shall enter into a license agreement (a "License Agreement") in form and substance reasonably acceptable to

Lessee and Lessor. The License Agreement shall provide that Lessor shall pay Lessee fifty percent (50%) of all sub-license fees paid to Lessor by any such Third-Party User for use of the Licensed Space.

19. **NOTICES.** Except as provided in Section 8, all notices or other communications provided for in this Lease shall be in writing and shall be deemed sufficient if sent by certified or registered mail, or by nationally recognized overnight courier service, addressed as follows:

To Lessee: Pierce Transit  
3701 96<sup>th</sup> Street SW  
Lakewood, Washington 98499  
Attention: Dana A. Henderson, General Counsel

To Licensor: IWG Towers Assets I, LLC  
ATTN: Legal Department  
1199 N. Fairfax Street, Suite 700  
Alexandria, VA 22314  
(703) 535-3009  
(703) 535-3051 FAX

with a copy to: InSite Wireless Group, LLC  
ATTN: General Counsel  
260 Newport Center Drive, Suite 302  
Newport Beach, CA 92660  
(949) 999-3319  
(949) 999-3359 FAX

Any such address may be changed by either party by giving notice to the other party in the manner above provided. Notices shall be effective one (1) business day after deposit with a national courier service, or five (5) business days after deposit in the U.S. Mail. Inability to deliver due to change of address for which no notice was given or refusal to accept delivery shall be deemed delivery hereunder.

20. **QUIET ENJOYMENT.** Lessor hereby covenants and agrees that if Lessee shall fully and faithfully perform all of the covenants and agreements herein stipulated to be performed on Lessee's part, Lessee shall at all times during the Term have the peaceable and quiet enjoyment and possession of the Premises without hindrance from Lessor or any person or persons lawfully claiming the Premises by, through or under Lessor.

21. **MISCELLANEOUS.**

(a) Subject to the terms and conditions of Section 12, Lessor represents and warrants to the Lessee that it has the full right, power and authority to enter into and perform under this Lease and that it is under no obligation, contractual or otherwise which might in any way interfere with its full and complete performance of this Lease. Lessee represents

and warrants to Lessor that it has the full right, power and authority to enter into and perform under this Lease and that it is under no obligation, contractual or otherwise which might in any way interfere with its full and complete performance of this Lease.

(b) This Lease is binding upon and shall inure to the benefit of the parties hereto, and their respective permitted successors and permitted assigns.

(c) This Lease contains the entire agreement between the parties and supersedes all prior agreements, whether written or oral, pertaining to the subject matter hereof, and this Lease, including any Exhibits hereto, may not be amended except by a document signed by duly authorized officers of the parties hereto.

(d) Unless specifically stated otherwise, this Lease shall be governed and construed in accordance with the laws of the State of Washington.

(e) Nothing herein contained shall be deemed or construed by the parties hereto, nor by any other party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

(f) Notwithstanding anything contained in this Lease to the contrary, Lessee acknowledges and agrees that Lessee shall look solely to the estate and interest of Lessor in Lessor's Property for the collection of any judgment recovered against, or liability of, Lessor by reason of Lessor's breach of this Lease or otherwise, and no other property or assets of Lessor shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Lessee's remedies under or with respect to either this Lease, the relationship of Lessor and Lessee hereunder, or Lessee's use of the Premises.

(g) Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Lease.

## 22. ENVIRONMENTAL.

### (a) Environmental Definitions.

i. "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances, regulations, codes and rules, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any legally applicable judicial or administrative interpretation thereof, and any legally applicable order or decree, relating to the regulation and protection of human, public or employee health, safety, the environment, industrial hygiene and natural resources, and, without limiting the foregoing, all such laws governing or imposing requirements, including transportation requirements, liability or standards of conduct with respect to hazardous substances, chemicals, petroleum or petroleum products, PCBs, leaded paint, batteries, asbestos, recyclable materials, electronic wastes and materials, and universal wastes and other wastes. Environmental Laws include but are not limited to, the following statutes and all

legally applicable regulations, guidelines or policies issued or promulgated thereunder: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.); the Emergency Planning and Community Right-To-Know Act, as amended (42 U.S.C. §11001 et seq.) (“**EPCRA**”); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §136, et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, et seq.); the Toxic Substances Control Act, as amended (15 U.S.C. §2601, et seq.); the Clean Air Act, as amended (42 U.S.C. §740, et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251, et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. §651, et seq.); and the Safe Drinking Water Act, as amended (42 U.S.C. §300f, et seq.); the Model Toxics Control Act, as amended (Chapter 70.105D RCW); and all analogous applicable state and local counterparts or equivalents.

ii. “**Hazardous Materials**” shall mean any hazardous substances, chemicals, petroleum, wastes and by products, and any other materials, as defined and/or regulated under Environmental Laws, including but not limited to products containing any hazardous materials (by way of example and not limitation, such products shall include Uninterruptible Power Supply batteries and fuel used to power back-up generators).

iii. “**Environmental Remediation**” means any action or expenditure consistent with the purposes of any Environmental Laws to identify, eliminate, or minimize any threat posed by Hazardous Substances to human health or the environment including any investigative and/or monitoring activities with respect to any release or threatened release of a Hazardous Substance and any health assessments and or any health effects studies conducted in order to determine the risk or potential risk to human health.

(b) **Covenants.** Lessor and Lessee each covenants and agrees to comply, at its sole cost and expense, with all applicable Environmental Laws with respect to its activities on Lessor’s Property, including the Premises. Lessee shall not store, handle, transport or otherwise bring on, in, around, or under Lessor’s Property, or any part thereof, any Hazardous Materials, with the exception of those Hazardous Materials commonly found in, or used with respect to the operations of, telecommunications equipment, and with respect thereto, Lessee shall properly manage and store such Hazardous Materials in accordance with Environmental Laws and to assure that such Hazardous Materials are not released onto or from Lessor’s Property. Lessee shall not install and/or utilize any underground storage tank on Lessor’s Property.

i. By way of example and not limitation, Lessee’s obligations to comply with Environmental Laws shall include the responsibility to make all reports and filings required by EPCRA with respect to Lessee’s storage and/or use of Hazardous Materials on Lessor’s Property (e.g., §302 and §303 planning requirements; §304 release reports; §311 submissions of Material Safety Data Sheets or lists of hazardous chemicals to the Local Emergency Planning Committee, State Emergency Response Commission



and local fire department; §312 submission of inventory form (Tier I or II as applicable); and §313 submission of Toxic Chemical Release Forms). Lessee shall, upon request of Lessor, provide Lessor copies of all such reports and filings.

ii. In the event that Lessee's activities authorized under this Lease on Lessor's Property require it to obtain any permits or approvals under Environmental Laws, Lessee shall have the sole responsibility of obtaining any such permits or approvals. Lessee shall notify Lessor, in writing, of its intent to apply for such permits and approvals and shall supply to Lessor, at its request, copies of all such applications, licenses, approvals, and ongoing submissions made by Lessee thereunder.

iii. In the event that any of Lessee's proposed activities might have an impact on the regulatory responsibilities of Lessor under Environmental Laws (by way of example and not limitation, in the event that the use/storage of a chemical by Lessee or the use of an emergency generator by Lessee could trigger new or expanded reporting by or permitting of Lessor relating to Lessor's Property), Lessee shall notify Lessor and consult with Lessor with respect to such potential reporting or permitting.

(c) **Notice.** Prior to entering onto Lessor's Property with any Hazardous Materials, Lessee shall provide to Lessor a list, with approximate quantities, of all Hazardous Materials that will be brought onto/used on Lessor's Property. Lessee shall provide an update of this list to Lessor prior to Lessee materially increasing the quantity of, or materially changing the types of, Hazardous Materials it intends to bring onto/use on Lessor's Property.

(d) **Cleanup Obligations.** In the event of the release of any Hazardous Materials on or from Lessor's Property resulting from Lessee's activities on Lessor's Property, or those of its employees, agents or invitees, Lessee shall immediately notify Lessor and any regulatory agencies to which notice is required under Environmental Laws. Lessee shall also immediately take all necessary actions to contain and remediate the release to Lessor's satisfaction.

(e) **Indemnification.**

i. Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties from and against all claims, liabilities, damages, judgments, orders, fines, penalties, investigations or remedial measures, enforcement actions, costs and expenses, and claims by governmental agencies or third parties for Environmental Remediation (including reasonable attorneys' and experts fees and costs), to the extent resulting directly or indirectly from or in connection with Lessee's failure to fulfill its covenants or obligations under this Section 22 or Lessee's negligent acts or omissions. The parties agree that Lessor will not be considered as contributing to the injury or damage based solely on Lessor's status as an owner of the Lessor's Property and the Premises. The indemnity obligations contained herein shall survive the expiration or termination of the Lease.

ii. Lessor shall indemnify, defend and hold harmless the Lessee Indemnified Parties from and against all claims, liabilities, damages, judgments, orders, fines, penalties, investigations or remedial measures, enforcement actions, costs and expenses, and claims by governmental agencies or third parties for Environmental Remediation (including reasonable attorneys' and experts fees and costs), to the extent resulting directly or indirectly from or in connection with Lessor's past, present or future failure to fulfill its covenants or obligations under this Section 22 or Lessor's negligent acts or omissions. The parties agree that Lessee will not be considered as contributing to the injury or damage based solely on Lessee's status as a lessee or operator on the Premises. The indemnity obligations contained herein shall survive the expiration or termination of this Lease.

23. **BROKERS.** Lessor and Lessee each warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this Lease, and each agrees to indemnify, defend and hold the other harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with such party with regard to this Lease. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

***SIGNATURES ON FOLLOWING PAGE***

IWG Site: WA713 37<sup>th</sup> Avenue NE Tacoma

IN WITNESS WHEREOF, the parties hereto have caused this Tower Site Lease Agreement to be duly executed by their authorized representatives as of the date first written above.

**LESSOR:**

IWG TOWERS ASSETS I, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSEE:**

PIERCE COUNTY PUBLIC TRANSPORTATION  
BENEFIT AREA CORPORATION, a  
Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IWG Site: WA713 37<sup>th</sup> Avenue NE Tacoma

STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

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

Dated: \_\_\_\_\_



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
 Notary Public  
 Print Name \_\_\_\_\_  
 My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF PIERCE )

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

Dated: \_\_\_\_\_



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
 Notary Public  
 Print Name \_\_\_\_\_  
 My commission expires \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF  
LESSOR'S PROPERTY**

The northwest quarter of Government Lot 2 in Section 14, Township 21 North, Range 3 East of the W.M., in Pierce County, Washington.

IWG Site: WA713 37<sup>th</sup> Avenue NE Tacoma

**EXHIBIT B**

**LEGAL DESCRIPTION OF  
THE PREMISES**

IWG Site: WA713 37<sup>th</sup> Avenue NE Tacoma

**EXHIBIT C**

**INITIAL PLANS FOR  
NEW TOWER**

**EXHIBIT D****USERS**

<b><u>Entity Name</u></b>	<b><u>Date of Agreement</u></b>	<b><u>Current Term Expiration Date</u></b>	<b><u>Current Monthly Rent</u></b>	<b><u>Escalation</u></b>	<b><u>Remaining Renewal Options</u></b>
<b>Third Party Users:</b>					
<b>Public Safety Users:</b>					



Exhibit 3-A

Cost of Land Lease - based on 10 years with 4, five-year options

BASE RENT

1	2	3	4	5	6	7	8	9	10	TOTAL
\$ 26,400	\$ 27,192	\$ 28,008	\$ 28,848	\$ 29,713	\$ 30,605	\$ 31,523	\$ 32,469	\$ 33,443	\$ 34,446	\$ 302,646

OPTION 1

11	12	13	14	15	TOTAL
\$ 35,479	\$ 36,544	\$ 37,640	\$ 38,769	\$ 39,932	\$ 188,365

OPTION 2

16	17	18	19	20	TOTAL
\$ 41,130	\$ 42,364	\$ 43,635	\$ 44,944	\$ 46,293	\$ 218,367

OPTION 3

21	22	23	24	25	TOTAL
\$ 47,681	\$ 49,112	\$ 50,585	\$ 52,103	\$ 53,666	\$ 253,147

OPTION 4

26	27	28	29	30	TOTAL
\$ 55,276	\$ 56,934	\$ 58,642	\$ 60,401	\$ 62,213	\$ 293,466

GRAND TOTAL \$ 1,255,991

# FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is executed as of October \_\_\_\_, 2015, between PRC TACOMA - LLC, a Washington limited liability company ("Lessor"), and PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation ("Lessee").

## RECITALS

A. Lessor and Lessee, entered into that certain Lease (the "Lease") dated as of June 1, 2007, pursuant to which Lessee leases from Lessor a tower and building located on Indian Hill in Tacoma, Washington, and more particularly described in the Lease (the "Leased Premises"). Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease.

B. Lessee has a right of first refusal to purchase the Leased Premises pursuant to Section 3 of the Lease (the "Right of First Refusal"). Lessor desires to sell the Leased Premises and duly notified Lessee of such intent by letter dated July 22, 2013. By subsequent correspondence, Lessor and Lessee reached a tentative and nonbinding agreement in principle on certain terms and conditions of the purchase of the Leased Premises by Lessee ("Tower Purchase"). Among those conditions of the proposed Tower Purchase was that Lessee obtain an agreement for a long term ground lease of the real property containing the Leased Premises from the fee owner thereof.

C. Despite good faith efforts of all parties, Lessee has thus far been unable to reach an agreement for a long term lease from the fee owner.

D. On and subject to the terms and conditions of this Amendment, Lessor is willing to continue to honor the Right of First Refusal and to not market the Leased Premises for sale to a third party, and in consideration of such agreement, Lessee has agreed to certain modifications to the term and rental under the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

### 1. Amendments to Lease.

a. Term. The Initial Term as set forth in Section 2 of the Lease currently expires 20 years following the date of the Lease, or May 31, 2027, subject to the conditions described below. Section 2 of the Lease states that the Term is contingent on the extension of Lessor's ground lease, which originally expired on April 7, 2012. The ground lease referred to in the Lease was replaced by Tower Site License Agreement between Lessor and CTI Towers, Inc., which expires on December 31, 2017. Therefore, Lessor and Lessee agree that the Initial Term of the Lease as currently established expires no earlier than December 31, 2017. Nonetheless, Lessor and Lessee hereby agree that the Term of the Lease shall expire on March 31, 2016 (the "Expiration Date") or upon the Tower Purchase, whichever comes sooner, and Lessee shall have no further right to extend the Term of the Lease.

b. Rent. Pursuant to Section 3 of the Lease, no rental payments are required from Lessee for the first ten years of the Term. Lessor and Lessee hereby agree that Lessee shall pay to Lessor rent in the amount of \$2,000 per month from September 1, 2015 through March 31, 2015 to be paid by the 5<sup>th</sup> of each month through the Expiration Date or the tower purchase, whichever comes sooner.

c. Right of First Refusal. In consideration for the foregoing amendments, including the earlier commencement of rental payments, Lessor agrees to continue to honor the Right of First

Refusal, and to not market the Leased Premises or accept any other offer for the Leased Premises, through October 31, 2015. If Lessor and Lessee have not entered into an agreement for the purchase and sale of the Leased Premises by October 31, 2015, then Lessee's rights under the Right of First Refusal shall expire and Lessor shall be free to sell the Leased Premises to any third party, subject to Lessee's rights under the Lease for the remainder of the Term.

2. Brokers. Lessor and Lessee each represents and warrants to the other that no broker was involved in the negotiation of this Amendment and no third party is entitled to a commission in connection with the transactions contemplated herein. Each party shall hold the other harmless from and indemnify and defend the other against any and all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs incurred in defending against the same, by any real estate broker or salesperson for a commission, finder's fee or other compensation as a result of the inaccuracy of such party's representation above.

3. Authority. Each party hereto and each person executing this Amendment on behalf of such party, hereby covenants and warrants that (a) the party is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) the party has and is duly qualified to do business in Washington, (c) the party has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Amendment and to perform all of the party's obligations under the Lease, as amended by this Amendment, and (d) each person (and all of the persons if more than one signs) signing this Amendment on behalf of the party is duly and validly authorized to do so.

4. Lease in Full Force and Effect. Except as expressly provided herein, the Lease is unmodified hereby, remains in full force and effect, and is hereby ratified and confirmed by the parties hereto.

5. Miscellaneous. Lessor and Lessee each agree to execute any and all documents and agreements reasonably requested by the other party to further evidence or effectuate the terms of this Amendment. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns under the Lease. In case of any conflict between any term, covenant or condition of this Amendment and the Lease, the terms, covenants and conditions of this Amendment shall govern. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one agreement.

*Signatures Appear on Following Page*

IN WITNESS WHEREOF, the parties have executed this document as of the date and year first above written.

LESSOR:

PRC TACOMA - I LLC, a  
Washington limited liability company

By: \_\_\_\_\_  
Name:  
Title:

LESSEE:

PIERCE COUNTY PUBLIC TRANSPORTATION  
BENEFIT AREA CORPORATION, a  
Washington municipal corporation

By: \_\_\_\_\_  
Name:  
Title: