

**Lessor:**

City of Cle Elum  
119 West First Street  
Cle Elum, WA 98922

**Lessee:**

Vertical Bridge Development, LLC  
750 Park of Commerce Drive, Suite 200  
Boca Raton, FL 33487  
Site #: US-WA-5105  
Site Name: Cle Elum DT

**TELECOMMUNICATIONS FACILITIES  
LEASE AGREEMENT**

**THIS TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT** (“Lease”) is entered into by and between the City of Cle Elum, a municipal corporation duly organized and existing under the laws of the State of Washington, as Lessor (hereinafter referred to as “City”) whose address is 119 West First Street, Cle Elum, WA 98922, and Vertical Bridge Development, LLC, a Delaware limited liability company (hereinafter referred to as “Lessee”) whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487.

W I T N E S S E T H:

1. **PREMISES.** The City owns certain real property (Assessor’s Parcel Number 621534, 950421) legally described in **Exhibit 1** (hereinafter referred to as “Property”). The City leases to the Lessee 4,000 square feet of space located as depicted in **Exhibit 2**, for housing, installing, constructing, operating and maintaining certain telecommunications facilities, together with an access easement and utility easement to such telecommunications facilities from a public right of way (hereinafter, collectively, referred to as “Premises”). Lessee accepts the Premises for such purpose, subject to the considerations, terms and conditions specified in this Lease Agreement.
2. **DEFINITIONS.** For the purpose of this Lease, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

“Facilities” or “Telecommunications Facilities” means the plant, equipment, and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, electronics, equipment storage structures and other appurtenances used or to be used to transmit, receive, distribute, provide, house, or offer Telecommunications Services.

“Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, and individuals and includes their lessors, trustees, and receivers.

**“Provider”** means and includes every person who provides Telecommunications Services over telecommunications facilities with or without any ownership or management control of the facilities.

**“Public street”** means any highway, street, alley, or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated, or devoted to highway purposes.

**“Public way”** means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City’s right, title, interest, or authority to grant a permit or lease to occupy and use such streets and easements for telecommunications facilities.

**“Telecommunications carrier”** means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, or property within the City, used or to be used for the purpose of offering Telecommunications Service.

**“Telecommunications Service”** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium. Telecommunication services(s) does not include dark fiber, cable television services, or services other than transmission services.

**3. USES AND PURPOSES.** Lessee shall have the use and occupancy of the Premises for the sole purpose of constructing, operating, and maintaining Telecommunications Facilities, together with access and utility easements serving the Premises including all easements of record as well as that portion of the Property designated by City and Lessee for Lessee (and Lessee’s guests, agents, customers, lessees, sublessees and assigns) ingress, egress, and utility purposes to and from a public right-of-way, as depicted in **Exhibit 2** for the sole purpose of providing Telecommunications Service. Lessee shall be responsible for adherence to all federal, state, and local regulations pertaining to the operation of a communications facility.

Lessee shall have the right, at its sole expense, to erect and maintain on the Premises improvements, personal property and facilities, as described in **Exhibit 2** or in construction drawings to be provided by Lessee to City, after obtaining required permits. Except in emergency situations, Lessee shall follow and comply with all permitting requirements applicable under the Cle Elum Municipal Code. All permit fees shall be at Lessee’s sole cost. Failure to so abide by these requirements shall be considered a material breach of this Lease.

City shall provide Lessee right of entry to the Premises at all times to service the Premises and the telecommunication facilities at all times during this Lease. Lessee shall have the right to use existing access drives. Lessee agrees to provide the City with a schedule outlining the

frequency of required visits (e.g., quarterly maintenance check, monthly site cleanup, etc.), and to give the City at least five (5) days notice prior to the use of substantial and/or heavy equipment. Substantial and/or heavy equipment shall mean any equipment larger than a pick-up truck, including, but not limited to cranes. Additionally, Lessee shall provide at least seven (7) days' notice prior to blocking any existing roadway for any length of time. Notwithstanding anything to the contrary herein, Lessee shall have 24 hour / 7 days a week emergency access to the Premises. Prior to construction of any improvements upon the Premises, Lessee shall install a tamper-proof gate on either end of the access road leading to the Premises, as shown on **Exhibit 2** and as reasonably directed by the City. Gates shall include signage that indicate: "No Thru Access – Emergency and Maintenance Use Only." Prior to construction of any improvements upon the Premises, Lessee shall make necessary repairs and upgrades to the existing access roadway, including grading and placement of one and a quarter inch crushed rock at a depth of three inches for the entire length of the roadway that falls between the two gates. Additionally, Lessee shall be responsible for any snow removal necessary to access Premises.

Lessee shall provide the City with a twenty-four hour point of contact for Lessee. Notification of changes to Lessee's point of contact shall be provided to the City within 24 hours by telephone or fax from the point of contact, which notice shall be followed by written notification pursuant to Section 36(g). Lessee shall be responsible for conducting appropriate background checks of all of their employees, contractors, subcontractors, or agents ("**Personnel**") that access the Premises.

Personnel visiting the Premises shall be readily identifiable as to their employer by uniform identification badge, marked company vehicle, or other proof of employment.

#### **4. TERM AND EARLY TERMINATION.**

(a) This Lease shall commence on the day in which Lessee begins construction of the Telecommunications Facilities (the "**Commencement Date**"). Unless sooner terminated as herein provided, the initial term shall be for a period of five (5) years following the Commencement Date (the "**Initial Term**").

(b) Provided Lessee is not in default under this Lease beyond any applicable notice period, cure period and, if applicable, any plan detailing corrective action to be taken by Lessee that is approved by City, Lessee shall have the option to extend the term of this Lease for six (6) successive terms of five (5) years each (each a "**Renewal Term**"). Each Renewal Term shall commence automatically, unless Lessee delivers notice to City, not less than 30 days prior to the end of the then-current Term, of Lessee's intent not to renew. For purposes of this Lease, "**Term**" shall mean the Initial Term and any applicable Renewal Term(s). No lease shall be renewed until any ongoing violations or defaults in Lessee's performance of this Lease have been cured, or a plan detailing the corrective action to be taken by Lessee has been approved by the City,

(c) If at any time during the Term, Lessee determines, in its sole and absolute discretion, with or without cause, that the Premises is not suitable or no longer suitable or desirable for Lessee's intended use and/or purposes, Lessee shall have the right to terminate this Lease upon 60 days prior written notice to City.

(d) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Premises or any part thereof after the expiration of this Lease, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions and subject to termination by the City with sixty (60) days' notice to Lessee.

**5. APPEARANCE OF FACILITIES.** The Facilities to be installed on the Premises, including all arrays, shall meet the following standards:

(a) All facilities, including arrays, shall be painted or otherwise colored dark green to match the surrounding ponderosa pine dominant forest;

(b) All antennas, arrays, or other pole mounted equipment shall be flush mounted as closely as possible for a tower arrangement;

(c) All cabling, conduit, or other wiring shall be routed through the inside of the support pole; and

(d) All ground equipment shall be color matched to the existing surroundings, and/or enclosed and/or shrouded, and screened by fencing, walls, landscaping, structures, or topography or a combination thereof to be the least aesthetically disruptive to the landscape.

**6. RIGHTS GRANTED.** This Lease does not convey any fee interest in the Property, but shall be deemed the right only to lease, use and occupy the Premises for the limited purposes and the Term. Further, this Lease shall not be construed as any warranty of title.

City warrants and represents that it is the owner in fee simple of the Property and so long as Lessee is not in default under this Lease beyond any applicable notice and cure period, City covenants and agrees that Lessee shall peaceably and quietly hold and enjoy the Premises throughout the Term, without any ejection by City, its successors or assigns or by those claiming by, through or under them.

Lessee has inspected or will inspect the Premises, and enters upon the Premises with knowledge of its physical condition and the danger inherent in operations conducted in, on, or near the Premises. LESSEE ACCEPTS THE PREMISES IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE PREMISES.

**7. INTERFERENCE.** During the Term, City, its successors and assigns, will not grant any ground lease, license, or easement with respect to the Premises. In addition, during the Term, City, its successors and assigns, will not grant any ground lease, license, or easement with respect to the Property (outside of the Premises) and any property adjacent or contiguous to the Property that is fee owned by City for any of the uses contemplated herein, including as set forth in Section 3 herein. City shall not cause or permit the construction of radio or communications towers on the Property or on any other fee owned property of City adjacent or contiguous to or in the immediate vicinity of the Property, except for towers constructed by Lessee. City and Lessee intend by this Lease for Lessee (and persons deriving rights by, through, or under Lessee) to be the sole parties to market, use, or sublease any portion of the Property for communications or broadcast facilities during the Term. City agrees that this restriction on the use of the Property is commercially reasonable, not an undue burden on City, not injurious to the public interest, and shall be specifically enforceable by Lessee (and persons deriving rights by, through or under Lessee) in a court of competent jurisdiction. The foregoing restriction shall run with the land and be binding on the successors and assigns of City.

**8. OWNERSHIP AND REMOVAL OF IMPROVEMENTS.** All buildings, landscaping and all other improvements, except Telecommunications Facilities, shall become the property of the City upon expiration or termination of this Lease. In the event that the City requires removal of such improvements after expiration or early termination of this Lease, the City shall notify Lessee in writing at least 60 days before the expiration or early termination of this Lease and such removal shall be accomplished at the sole expense of the Lessee and completed within 90 days after the date this Lease expires or is terminated. Additional time may be granted upon the discretion of the City which approval shall not be unreasonably withheld, delayed or conditioned. In the event that Telecommunications Facilities or other equipment are left upon City property after the aforementioned 90 day period, they shall, at the City's option, if not removed by the Lessee upon 30 days written notice from the City, be removed and stored at the expense of Lessee. Stored Telecommunications Facilities that are not claimed by the Lessee within 6 months from the expiration or early termination of this Lease shall become the property of the City. Additionally, should the Facilities be damaged, destroyed, or rendered useless due to tampering, terrorism, or a natural act such as fire, Lessee shall be solely responsible for the restoration or removal of the Facilities. Such restoration or removal shall be completed within 30 days from the date of such damage, destruction, or rendering useless.

**9. CANCELLATION OF LEASE BY LESSEE.**

(a) This Lease is contingent upon Lessee obtaining all necessary permits, approvals, and licenses for the proposed Facilities. In the event that Lessee is unable to obtain all such permits, approvals, and licenses, Lessee may cancel this Lease without further obligation by giving 30 days prior written notice to the City. However, no refund of any prepaid rental amounts shall be made. Lessee agrees to restore the Property to its condition as it existed at the commencement of this Lease, or better, reasonable wear and tear and casualty not caused by Lessee excepted.

(b) In the event Lessee determines that the Premises are unsuitable for its intended purpose at any time after the Commencement Date, or if Lessee determines that the Premises are not appropriate for its operations for economic, environmental, or technological reasons, including without limitation, signal strength, coverage or interference, Lessee shall have the right to cancel this Lease upon 180 days written notice to the City.

## 10. COMPENSATION TO THE CITY.

(a) Lessee will pay to City a one-time payment of One Thousand Dollars (\$1,000.00) within thirty (30) days after the full execution and delivery of this Lease to Lessee.

(b) Starting on the Commencement Date, Lessee shall pay an annual rent at a rate of \$24,000.00 per year ("**Rent**"), which shall be prorated for any partial months during the first year of this Lease, which shall be submitted to the City address as set forth below no later than January 5<sup>th</sup> of each year for that calendar year. Subject to the annual increase of the Rent set forth in Section 10(c) below, the first five years' worth of Rent shall be due as a lump sum amount payable within 30 days after the Commencement Date.

(c) Each year following the first year after the Commencement Date, the annual Rent shall automatically increase by three percent (3%).

(d) In the event there are two (2) or more telecommunications carriers, Lessee agrees to pay City twenty-five percent (25%) of each such additional telecommunications carrier's monthly sublease or license fee ("**25 % Sublease Fee**") as additional Rent (individually, or together if applicable, a "**Revenue Share Fee**"), subject to the following terms and conditions. The applicable Revenue Share Fee shall commence on the first day of the month following the date that such additional telecommunications carrier(s) commences payments to Lessee of such carrier's Sublease Fee under its respective sublease(s). The Revenue Share Fee shall only be due and payable in the event there are two (2) or more telecommunications carriers. If at any time subsequent to the addition of a second (2<sup>nd</sup>) telecommunications carrier the number of telecommunications carriers is reduced to one (1) telecommunications carrier, then no Revenue Share Fee shall be due and payable. Notwithstanding anything to the contrary contained herein, the Revenue Share Fee shall only be due and payable by Lessee to City hereunder during the term of such telecommunications carriers' sublease agreements for so long as such telecommunications carriers are actually paying to Lessee the requisite Sublease Fee set forth therein. For purposes of this Lease, Sublease Fees shall be all rent actually collected from any sublease that Lessee enters into with any subtenant or licensee including amendments and renewals thereof but excluding: (i) any reimbursements or pass-throughs from such subleases or licenses to Lessee for charges including but not limited to utility charges, taxes, or other pass-through expenses or (ii) any fees from subleasees or licenses to Lessee for services performed on behalf of such subleasees or licensees including but not limited to site acquisition, due diligence, design and engineering work, construction, site inspections, radiofrequency monitoring and testing, repairs, and zoning and permitting.

(e) Subject to Section 29, any payments received after fifteen (15) days after the due date shall include a late payment penalty of 2% of the annual Rent and/or Revenue Share Fee for each day or part thereof past the due date.

**11. AMENDMENT OF LEASE.** Except as provided within this Lease, a new lease shall be required if Lessee desires to expand the Premises. If ordered by the City to locate or relocate its Telecommunications Facilities or other equipment on the City Property pursuant to Section 18, the City shall grant a lease amendment. Should Lessee desire to amend this Lease, or if additional City review of materials submitted pursuant to this Lease is required, or if a new lease is required for Lessee to expand the Premises, within thirty (30) days after notice from the City, Lessee shall reimburse the City for the City's actual and reasonable costs incurred relating to the review, issuance, renewal, amendment, or administration of this Lease and/or processing and negotiation of a new lease, including, but not limited to, reasonable attorneys' fees; however, Lessee shall not be required to reimburse City with regard to any amendment or new lease arising out of a relocation of the Facilities per Section 18.

**12. IMPROVEMENTS.** During the term of this Lease if Lessee wishes to expand the initial configuration contained in **Exhibit 2**, Lessee will provide at least sixty (60) days' notice to City. The Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment. Lessee may, subject to the foregoing, make any improvement, alteration or modification to the Premises as are deemed appropriate by Lessee for the permitted use herein, provided that such improvements, alterations, or modifications meet all the requirements of Section 5 (Appearance of Facilities) of this Lease and/or the Cle Elum Municipal Code.

**13. POLICE POWER.** In accepting this Lease, Lessee acknowledges that Lessee's rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and Lessee agrees to comply with all applicable general laws enacted by the City pursuant to such power.

**14. INTERFERENCE WITH THE PUBLIC STREETS OR PUBLIC WAYS.** Lessee shall not locate or maintain its Telecommunications Facilities so as to unreasonably interfere with the use of the public streets or public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public streets or public ways, such unreasonable interference to be determined in the reasonable discretion of the City. All such facilities which interfere with public ways shall be removed by Lessee, at Lessee's cost, temporarily or permanently, as reasonably determined by the City Public Works Director.

**15. REPAIR AND EMERGENCY WORK.** In the event of an unexpected repair or emergency immediately endangering the public health, Lessee may commence such repair and emergency response work as required under the circumstances, provided Lessee shall notify the

City as promptly as reasonably possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable and shall apply for all necessary permits to perform such work within two (2) business days after such repair or emergency work continues.

**16. MAINTENANCE OF LEASE FACILITIES.** Lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements. Lessee shall not permit waste, damage, or injury to the Premises including any City property, public streets or public ways of the City, other ways or other property, whether publicly or privately owned, located in, on, or adjacent thereto. Lessee shall not restrict site access to City except as provided herein. City shall have the exclusive right to inspect the Lessee's Telecommunications Facilities and equipment at any time during the Term to ensure compliance with the terms and conditions herein; provided, however, City shall provide to Lessee notice at least seven (7) business days before such inspection so as to permit Lessee to make the necessary arrangements to be present at all inspections by City of Lessee's Telecommunications Facilities and equipment.

**17. SIGNAGE.** Lessee shall display proper signage as required by the FCC as well as current signage on telecommunication facilities identifying Lessee, Lessee's site number, site name, and a 24 hour phone number. Signage shall be posted and clearly visible at all times.

**18. REDEVELOPMENT.** Notwithstanding anything in this Lease to the contrary, City shall have the right, after the first 10 years of the Term, to redevelop the Property subject to the following conditions:

(a) **City's Notice.** If City intends to redevelop the Property, City shall provide Lessee with written notice of such intent at least 18 months ("**City's Notice**") prior to the commencement of any construction implementing City's redevelopment plans. City's Notice shall contain a description of City's redevelopment plans and shall also notify Lessee whether the location of the Premises is (1) inconsistent with City's redevelopment plans, or (2) that the location of the Premises shall be unaffected by City's redevelopment plans and that this Lease shall remain in full force and effect. In the event the location of the Premises is inconsistent with City's redevelopment plans, then the parties to this Lease shall use their best efforts to identify promptly another location on the Property satisfactory to both the parties to which the Premises shall be permanently relocated. If the parties cannot identify a satisfactory location to which the Premises can be permanently relocated, then Lessee shall be allowed to place a temporary mobile facility at a location on the Property reasonably agreed to by the parties. Following such temporary relocation and upon completion of the construction of the improvements contemplated by City's redevelopment plans, the parties shall then use their best efforts to find suitable premises on or in any of the improvements constructed by City in connection with the redevelopment plans to which the Premises shall be permanently relocated.



(b) **Lessee May Terminate.** In the event that Lessee determines, in its sole discretion, during the implementation of City's redevelopment plans that Lessee will be unable to operate continuously without interference, then Lessee shall have the right to terminate this Lease upon thirty (30) days written notice.

(c) **Costs.** If the Premises are either temporarily or permanently relocated as described in Section, then City shall pay the cost of relocating and reconstructing the Telecommunications Facilities. City shall be responsible for all costs of implementing the redevelopment plans, including, without limitation, the construction costs for any improvements which may constitute Lessee's temporary or permanent Premises. Notwithstanding the foregoing, City shall have no obligation for the cost of the obtainment of any electronic communication devices, including without limitation any transmitter, receiver, antenna or cable.

(d) **Revised Site Plan.** Upon permanent relocation of the Premises, the parties shall execute an amendment to this Lease which redefines the Premises and which deletes the existing Exhibit 2 and replaces it with a revised Exhibit 2. Except as otherwise provided in this Section, all other terms and conditions of this Lease shall remain in full force and effect upon relocation of the Premises. In the event a new lease is required, except for the new definition and exhibit of the Premises, all other terms and conditions of this Lease shall be set forth in the new lease unless the parties mutually agree otherwise, with neither party being required to negotiate any new terms or conditions.

**19. DAMAGE TO FACILITIES.** Unless directly and proximately caused by the negligent, willful, intentional, or malicious acts by the City not authorized herein, the City shall not be liable for any damage to or loss of any Facility upon City property as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of City.

**20. REMOVAL OF UNAUTHORIZED FACILITIES.** Within thirty (30) days following written notice from the City, Lessee or any person who owns, controls, or maintains on behalf of Lessee any unauthorized telecommunications system, facility, or related appurtenances within real property of the City shall, at its own expense, remove such facilities or appurtenances from the public ways or property of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(a) Upon expiration or early termination of this Lease without approved extension or renewal;

(b) Upon abandonment of the Facilities within the public ways or real property of the City. Any property of Lessee shall be deemed abandoned if left in place 30 days after expiration or early termination of this Lease;

(c) If the Facilities were constructed or installed without the prior grant of this Lease;

(d) If the Facilities were constructed or installed without the prior issuance of required City permit(s); and

(e) If the Facilities were constructed or installed at a location not permitted by this Lease.

Provided, however, that the City may, in its sole discretion, allow Lessee, or other such persons who may own, control, or maintain telecommunications facilities including the Facilities within the public ways or property of the City to abandon such facilities in place. No facilities of any type may be abandoned in place without the prior express written consent of the City. Any plan for abandonment or removal of the Facilities must be first approved by the City, and all necessary permits must be obtained prior to such work. Upon authorized permanent abandonment of the property of such persons in place, the property shall become that of the City, and such persons shall submit to the City an instrument in writing, to be reasonably approved by the City Attorney, transferring to the City the ownership of such property in which event, Lessee shall have no further obligations or liability with respect to such property or facilities. The provisions of this Section shall survive the expiration, revocation, or termination of this Lease granted hereunder. If the City does not authorize abandonment and Lessee fails to remove such facilities within thirty (30) days following notice, Lessee agrees to reimburse the City for any and all reasonable costs incurred by the City for facilities removal.

## **21. RESTORATION OF PUBLIC STREETS OR PUBLIC WAYS, OTHER WAYS, AND CITY PROPERTY.**

(a) In the event Lessee, or any person acting on its behalf, does any work in or affecting any City property, or in the event Lessee, or any person acting on its behalf, damages any City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such property to City construction standards as adopted before the work was undertaken, unless otherwise directed by the City. Lessee shall obtain all requisite permits for such work.

(b) If weather or other conditions do not permit the complete restoration required by this Section, Lessee shall temporarily restore the affected property. Such temporary restoration shall be at Lessee's sole expense and Lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) Lessee or any person acting in its behalf, shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property by reason of such work in or affecting such property.

(d) The City shall be responsible for inspection and final approval of the condition of City property following any construction and restoration activities therein. Further, the provisions of this Section shall survive the expiration, revocation, or early termination of this Lease for a period of one (1) year.

**22. SUBLEASING.** Lessee has the exclusive right to sublease or grant licenses without City's consent to use the Telecommunication Facilities, but no such sublease or license shall relieve or release Lessee from its obligations under this Lease. Such subletting or sublicensing shall result in additional rental payments to the City as set forth in this Lease. Any subtenants or sublicensees shall provide proof of insurance to City in the manner required by this Lease. Any subtenants or sublicensees shall further comply with Sections 5, 12-17, 19, 24-26, 30-32 of this Lease.

**23. UTILITIES.** Lessee is solely responsible for procuring and obtaining all requisite utility service to the Premises for Lessee's intended use of the Premises.

**24. LICENSES AND TAXES.** Upon commencement of this Lease, Lessee shall be responsible for paying real or personal property, applicable excise leasehold, business and occupation, and/or other taxes or licenses which may in the future be assessed as a direct result of Lessee's operations at the Telecommunications Facilities described herein.

**25. INSURANCE.** Lessee shall, as a condition of this Lease, secure and maintain the following liability insurance policies insuring both the Lessee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Lessee:

(a) Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

- (1) \$2,000,000.00 for bodily injury or death to each person;
- (2) \$2,000,000.00 for property damage resulting from any one accident; and
- (3) \$2,000,000.00 for all other types of liability.

(b) Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000.00 for each person and \$2,000,000.00 for each accident;

(c) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;

(d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.00;

(e) Pollution Commercial General Liability insurance covering losses caused by

pollution conditions that arise from the operations of Lessee. Lessee's Pollution Commercial General Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000. Lessee's Pollution Liability insurance shall cover bodily injury, property damage, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The City shall be named by endorsement as an additional insured on Lessee's Pollution Commercial General Liability insurance policy. If Lessee's Pollution Liability insurance is written on a claims-made basis, Lessee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Lease; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that this Lease terminates.

(f) The liability insurance policies required by this Section shall be maintained by Lessee throughout the Term, and such other period of time during which Lessee is operating without a Lease hereunder, or is engaged in the removal of its Telecommunications Facilities. Lessee shall provide original certificates, together with amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of Lessee and designating the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to said Lease. Lessee warrants that it shall pay any deductibles pursuant to its standard policies, and shall indemnify City for any losses or claims resulting from Lessee's failure to pay said deductible. Payment of deductibles and self-insured retentions shall be the sole responsibility of Lessee. Lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance, self-insurance, or self-insured pool coverage maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of Lessee's insurance and shall not contribute with it. The City shall be provided thirty (30) days advance notice of cancellation of any coverages required. Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, Lessee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

(g) Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

(h) All of Lessee's insurance requirements may be satisfied through any combination of excess liability and/or umbrella policies. Lessee's maintenance of insurance as required by this Lease shall not be construed to limit the liability of Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. If Lessee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by Lessee, irrespective of whether such limits maintained by Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Lessee.

(i) Lessee's Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Lessee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 11 or a substitute endorsement providing at least as broad coverage. Property insurance shall be written on an all risk basis. The Lessee's Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

(j) Lessee and City hereby release and discharge each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

## **26. GENERAL INDEMNIFICATION.**

(a) Lessee shall defend, indemnify, and hold harmless the City (to include for purposes of this Section, its officers, officials, employees, and volunteers) from and against any and all claims, suits, actions, or liabilities, including for injury or death of any person, or for loss or damage to property, which arises out of Lessee's use of the Premises, or from the conduct of Lessee's business, or from any activity, work, or thing done, permitted, or suffered by Lessee in or about the Premises, except only such injury or damage as shall have been occasioned by the gross negligence or willful misconduct of the City, or in any way relating to this Lease. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated and agreed to by the Lessee and City. The provisions of this Section shall survive the expiration or termination of this Lease for a period of one (1) year.

(b) Lessee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, easements, and property from activities conducted by the City, its officers, employees, agents, and volunteers, except for damage caused by the City's gross negligence or willful misconduct. Lessee releases and waives any and all claims against the City, its officers, employees, agents, and volunteers for damage to or destruction of Lessee's facilities except to the extent any such damage or destruction is caused by the negligent, grossly negligent, or willful and malicious action of the City, its officers, employees, agents, or volunteers.

(c) Lessee shall promptly notify City, in writing, of any and all casualties or accidents occurring in or about the Premises during the Term.

**27. BONDING.** Within thirty (30) days of the Commencement Date, Lessee shall execute a bond in the amount of Fifty Thousand Dollars (\$50,000.00) to the benefit of City to ensure the full and faithful performance of all of its responsibilities under this Lease and applicable Laws, including by way of example, and not limitation, Lessee's obligations to relocate and remove its Facilities, to restore the Premises if damaged or disturbed, and to reimburse the City for its direct costs associated with the same. If Lessee fails to provide or maintain the bond, then the City may require Lessee to substitute an equivalent cash deposit in lieu of the bond. Lessee's maintenance of the bond required pursuant to this Section shall not excuse unfaithful performance by Lessee, or limit the liability of Lessee to the amount of the bond or otherwise limit the City's resources available by law or in equity.

**28. ASSIGNMENTS OR TRANSFERS OF LEASE.** Lessee may not assign, or otherwise transfer all or part of its interest in this Lease without prior written consent of the City, which shall not be unreasonably withheld, delayed or conditioned; provided, however, that Lessee may assign, without the City's consent, Lessee's interest to a "**Pre-Approved Assignee.**" For purposes of this Lease, a Pre-Approved Assignee shall be any Lender in connection with a financing agreement, Lessee's parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest by reason of merger, acquisition or business reorganization. In the event of a sale by Lessee, such purchasing entity shall be acquiring fifty-one percent (51%) or more of Lessee's ownership assets.

(a) Except for an assignment by Lessee of Lessee's interest in this Lease to a Pre-Approved Assignee, no Lease shall be assigned or transferred in any manner within twelve (12) months after the initial grant of this Lease.

(b) Except for an assignment by Lessee to a Pre-Approved Assignee, the Lessee and any proposed assignee or transferee, shall provide and certify any other information reasonably required by the City, within thirty (30) days before the proposed assignment or transfer of the Lease.

(c) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold, and operate the Telecommunications Facilities pursuant to this Lease.

(d) Any transfer or assignment of Lessee's interest in this Lease that is not in accordance of this Section shall be void and is cause for revocation of this Lease.

**29. REVOCATION OR TERMINATION OF LEASE.** Subject to all applicable and cure periods set forth herein, this Lease may be terminated for the following reasons:

(a) Lessee's construction or operation in the City or in the public ways of the City or upon City property without proper City authorization;

- (b) Lessee's construction or operation at an unauthorized location;
- (c) Unauthorized sale, assignment, or transfer of Lessee's Lease, assets, or a substantial interest therein;
- (d) Abandonment of Lessee's Telecommunications Facilities in the public ways or upon City property for a period of six (6) months;
- (e) Failure to relocate or remove facilities as required in this Lease;
- (f) Failure to pay taxes, compensation, fees or costs when and as due;
- (g) Insolvency or bankruptcy of the Lessee;
- (h) Failure to construct or operate in accordance with approved permits;
- (i) Violation of any material provision or term of this Lease;
- (j) The Federal Communications Commission or its successor entity determines that the Telecommunications Facilities installed on the Premises are hazardous to health or safety;
- (k) Unauthorized substantial transfer of control of the Lessee;
- (l) Unauthorized assignment of this Lease;
- (m) Misrepresentations by Lessee in any written statement upon which the City relies in making the decision to grant, review, or amend this Lease;
- (n) Construction, operation, or maintenance by Lessee of the Telecommunications Facilities in a dangerous or hazardous manner.

**30. NOTICE AND DUTY TO CURE.** In the event that either party is in violation of or defaults under the provisions of this Lease, the party in default shall be given (a) written notice of the apparent violation, default or non-compliance, providing a short and concise statement of the nature and general facts of the violation, default or non-compliance; and (b) a reasonable period of time not exceeding 60 days to cure the violation from the date of receipt of the aforementioned written notice.

No act or omission of the parties after a breach by the other shall operate as a waiver of any past or future breach, or to deprive the party from promptly exercising any right or remedy it has under this Lease.

If a Court of Law determines that Lessee has willfully violated or purposefully failed to

comply with any provisions of this Lease after notice is given to Lessee by the City under the provisions of this Lease and Lessee has had an opportunity to cure in accordance with the terms of this Lease, then Lessee shall forfeit all rights conferred hereunder and the Lease may be revoked or annulled by City. The City may elect, in lieu of the above and without prejudice to any of its other legal rights and remedies, to pursue other remedies and recover damages and costs incurred by City by reason of Lessee's failure to comply.

**31. NOTICE OF ENTRY ON PRIVATE PROPERTY.** If directed by the City, at least seventy two (72) hours prior to entering private property or streets or public easements adjacent to or on such private property to perform permitted new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the Lessee. A door hanger may be used to comply with the notice and posting requirements of this Section. Lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Provided, however, that nothing in this Lease shall permit Lessee to unlawfully enter or construct improvements upon the property or premises of another.

**32. SAFETY REQUIREMENTS.** Lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections installed by Lessee in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the Property or Premises, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right to see that the Telecommunications Facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with Lessee, establish a reasonable time for Lessee to make necessary repairs. If the repairs are not made within the established reasonable time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from Lessee. All work at the Premises shall be done by personnel who are bonded and licensed tradespeople.

Lessee, at its sole expense, shall take all necessary actions to comply with all applicable Federal Communications Commission (FCC) radio frequency (RF) exposure regulations and requirements, and shall take reasonable precautions so that neither workers nor the public are subject to RF exposures above the FCC-specified levels. Lessee shall coordinate the compliance and certification of its installation with the FCC rules and guidelines for human exposure to RF electromagnetic fields with other telecommunications lessees on site, if any, and shall obtain written certification by a firm with documentable expertise, reasonably acceptable to City, that Lessee's facility complies with the RF exposure regulations and requirements. Lessee shall furnish a written copy of the entire report and certification to City within thirty (30) business days after



receipt. Compliance and certification under these provisions shall consist of the signed RF engineering report, together with implementation of all recommendations to assure Lessee's site-wide compliance, including, as appropriate, warning signage and other RF exposure mitigation measures.

**33. LIENS.** Lessee shall not permit any lien to be imposed upon the property of the City as a result of work done by or on behalf of Lessee and shall indemnify and hold the City harmless against any and all expenses, including reasonable attorney's fees and court costs in connection with any such lien.

**34. LENDER'S RIGHTS.**

(a) City agrees to recognize the leases/licenses of all sublessees and sublicensees and will permit each of them to remain in occupancy of its premises notwithstanding any default hereunder by Lessee so long as each such respective sublessee or sublicensee is not in default under the lease/license covering its premises.

(b) City consents to the granting by Lessee of a lien and security interest in Lessee's interest in this Lease and all of Lessee's personal property and fixtures attached to the real property described herein, and furthermore consents to the exercise by Lender of its rights of foreclosure with respect to its lien and security interest. City agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure.

(c) City hereby agrees to give Lender written notice of any breach or default of the terms of this Lease within fifteen (15) days after the occurrence thereof at the address set forth in Section 36(g). City further agrees that no default under this Lease shall be deemed to have occurred unless such notice to Lender is also given and that, in the event of any such breach or default under the terms of this Lease, Lender shall have the right, to the same extent, for the same period and with the same effect, as Lessee, plus an additional ninety (90) days after any applicable grace period to cure or correct any such default.

(d) City acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Lease. No Lender shall become liable under the provisions of this Lease or any lease executed pursuant to Section 34 hereof unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby or thereby.

(e) Lessee shall have the right from time to time to mortgage or otherwise encumber Lessee's interest in this Lease; provided, however, in no event shall there be more than one such mortgage or encumbrance outstanding at any one time. If Lessee shall so mortgage (each a "**Lessee Mortgage**") Lessee's interest in this Lease to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "**Lender**"), Lessee or such Lender shall give City prompt notice of such Lessee Mortgage and furnish City with a complete

and correct copy of such Lessee Mortgage, certified as such by Lessee or such Lender, together with the name and address of such Lender.

### **35. RIGHT TO NEW LEASE.**

(a) In the case of termination of this Lease for any reason, or in the event this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, City shall give prompt notice thereof to Lender at the address set forth in Section 34 or as may be provided to City by Lessee following the Commencement Date. Thereafter, City, upon written request of Lender, and within thirty (30) days after the receipt of such request, shall promptly execute and deliver a new lease of the Premises and assignment of all subleases and sublicenses to Lender or its designee or nominee (so long as such designee or nominee, other than Lender, is not Lessee or Lessee's successors or assigns), for the remainder of the Term upon all the covenants, conditions, limitations and agreements contained herein (including, without limitation, options to extend the Term) except for such provisions which must be modified to reflect such termination, rejection or disaffirmance and the passage of time, provided that such Lender (i) shall pay to City, simultaneously with the delivery of such new lease, all unpaid rent due under this Lease up to and including the date of the commencement of the term of such new lease and all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by City in connection with the default by Lessee, the termination of this Lease and the preparation of the new lease, and (ii) shall cure all defaults existing under this Lease which are susceptible to being cured by such Lender promptly and with due diligence after the delivery of such new lease. Notwithstanding anything to the contrary contained herein, provided such Lender shall have otherwise complied with the provisions of this Section, such Lender shall have no obligation to cure any defaults which are not susceptible to being cured by such Lender (for example, the bankruptcy of Lessee).

(b) For so long as Lender shall have the right to enter into a new lease with City pursuant to this Section, City shall not enter into a new lease of the Premises with any person or entity other than Lender, without the prior written consent of Lender.

### **36. ADDITIONAL PROVISIONS.**

(a) The parties hereto agree that (i) Lessee is in possession of the Premises notwithstanding the fact that Lessee has subleased, or may in the future sublease, certain of the improvements thereon to third parties and (ii) the requirements of Section 365(h) of Title II of the United States Code (the Bankruptcy Code) with respect to Lessee's possession of the leasehold under this Lease are satisfied. Accordingly, the right of Lessee to remain in possession of the leasehold under this Lease shall continue notwithstanding any rejection of this Lease in any bankruptcy proceeding involving City, or any other actions by any party in such a proceeding. This provision, while included in this Lease, has been separately negotiated and shall constitute a separate contract between the parties as well as a part of this Lease. The provisions of this Section are for the benefit of Lessee and its assigns, including, without limitation, Lender. The parties

hereto also agree that Lender is a party in interest and shall have the right to appear as a party in any proceeding brought under any bankruptcy law or under any other law which may affect this Lease.

(b) The provisions of Sections 33 and 34 hereof shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if such Sections were a separate and independent contract made by City, Lessee and Lender and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease, Lender may use and enjoy the leasehold estate created by this Lease without hindrance by City. The aforesaid agreement of City to enter into a new lease with Lender shall be deemed a separate agreement between City and such Lender, separate and apart from this Lease as well as a part of this Lease, and shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

(c) If a Lessee Mortgage is in effect, this Lease shall not be modified or amended by the parties hereto, or terminated or surrendered by Lessee, nor shall City accept any such termination or surrender of this Lease by Lessee, without the prior written consent of Lender, which shall not be unreasonably withheld.

(d) The provisions of Sections 33 and 34 hereof are for the benefit of Lender and may be relied upon and shall be enforceable by Lender as if Lender were a party to this Lease.

(e) City shall, within ten (10) days of the request of Lessee or any Lender or prospective Lender, provide an estoppel certificate as to any matters reasonably requested by Lessee or Lender.

(f) The right to extend or renew this Lease to purchase the Premises may be exercisable by the holder of a Lessee Mortgage and, before the expiration of any periods to exercise such a right, City must provide to Lender at least thirty (30) days prior written notice before the expiration of the right to so extend or renew in order to extinguish Lender's right to so extend, renew or purchase.

### **37. MISCELLANEOUS.**

(a) This Lease shall be governed by the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Lease, the parties specifically understand and agree that venue shall be exclusively in Kittitas County, Washington.

(b) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(c) Each party agrees to furnish the other, within fifteen (15) days after request, such truthful information as the other may reasonably request.

(d) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(e) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker.

(f) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(g) All notices, requests, claims, demands, and other communications hereunder shall be in writing and may be hand delivered (provided the deliverer provides proof of delivery) or sent by nationally-established overnight courier that provides proof of delivery, or certified or registered mail (postage prepaid, return receipt requested). Notice shall be deemed received on the date of delivery as demonstrated by the receipt of delivery. Notices shall be delivered to a party at the party's respective address below, or to such other address that a party below may provide from time to time:

CITY: City of Cle Elum  
Attn: Planning Department  
119 West First Street  
Cle Elum, WA 98922

LESSEE: Vertical Bridge Development, LLC  
750 Park of Commerce Drive, Suite 200  
Boca Raton, FL 33487  
Attn: Director of Development  
Site #: US-WA-5105  
Site Name: Cle Elum DT

With a copy to: Vertical Bridge Development, LLC  
750 Park of Commerce Drive, Suite 200  
Boca Raton, FL 33487  
Attn: General Counsel  
Site #: US-WA-5105  
Site Name: Cle Elum DT

LENDER: Toronto Dominion (Texas) LLC  
31 West 52nd Street  
New York, NY 10019  
Attn: Admin Agent  
Fax No. 416-982-5535

(h) Public Records Act. The Lessee acknowledges that Cle Elum is a public agency subject to Washington's Public Records Act, chapter 42.56 RCW, and that this Lease and any documents related to this Lease may be deemed a public record as defined in the Public Records Act and that if Cle Elum receives a public records request, unless a statute exempts disclosure or there is a court order enjoining disclosure, Cle Elum must disclose the record to the requestor.

(i) A short-form Memorandum of Lease may be recorded at Lessee's option in the form as depicted in **Exhibit 3**, attached hereto.

**38. ENVIRONMENTAL.** City represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease. Lessee may conduct soils testing on the Premises. Notwithstanding the foregoing, Lessee may install generators and supporting fuel tanks on the Premises as long as the City's Public Works department approves said generators, supporting fuel tanks, and secondary containment measures for each.

Lessee agrees to defend, indemnify, and hold City harmless from and against any and all claims, causes of action, demands, and liabilities including, but not limited to, damages, reasonable costs and expenses, assessments, penalties, fines, losses, judgments, and reasonable attorneys' fees that City may suffer due to the existence or discovery of hazardous substance(s) on the Premises or the mitigation of any hazardous substance to other properties or released into the environment that are caused by or result from Lessee's activity on the Premises. This indemnification specifically includes costs incurred in connection with any investigation of conditions or any cleanup, remedial, removal, or restoration work required by any governmental authority. The provisions of this Section shall survive the expiration or early termination of this Lease.

**39. NONDISCRIMINATION.** Lessee shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status or disability, except employment actions based on a bona fide occupational qualification.

**40. SUCCESSORS AND ASSIGNS.** All of the provisions contained in this Lease shall be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees, and assigns of the Parties; and all privileges as well as any obligations and liabilities of the Parties shall inure to their heirs, successors, and assigns equally as if they were specifically mentioned wherever the appropriate Party is named herein.

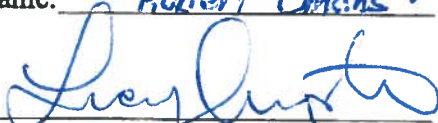
**[SIGNATURES BEGIN ON NEXT PAGE]**

[Lessor signature page to Telecommunications Facilities Lease Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Effective Date (date last signed by a party hereto).

**WITNESSES:**

  
Name: Robert Owens

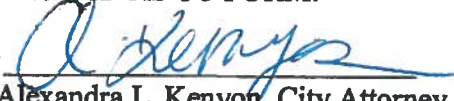
  
Name: Lucy Temple

**LESSOR:**

**City of Cle Elum**  
a Washington municipal corporation

By:   
Jay McGowan, Mayor

**APPROVED AS TO FORM:**

By:   
Alexandra L. Kenyon, City Attorney

[Lessor notary page to Telecommunications Facilities Lease Agreement]

STATE OF WASHINGTON  
COUNTY OF KITTITAS

On this 29<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jay McGowan, to me known to be the Mayor of City of Cle Elum, the entity that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Jay McGowan is authorized to execute the said instrument on behalf of City of Cle Elum.

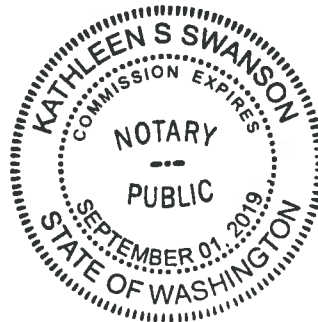
Witness my hand and seal the day and year first above written.

Kathleen Swanson  
Notary Public

Printed Name: Kathleen S. Swanson

My Commission Expires:

9/1/19



STATE OF WASHINGTON  
COUNTY OF KITTITAS

On this 29<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Alexandra Kenyon, to me known to be the City Attorney of City of Cle Elum, the entity that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Alexandra L. Kenyon is authorized to execute the said instrument on behalf of City of Cle Elum.

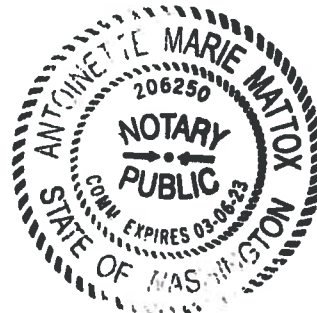
Witness my hand and seal the day and year first above written.

Antoinette Marie Mattox  
Notary Public

Printed Name: Antoinette Marie Mattox

My Commission Expires:

3-06-23



[Lessee signature and notary page to Telecommunications Facilities Lease Agreement]

WITNESSES:

Rachel Williamson  
Name: Rachel Williamson

Michelle L. Lewis  
Name: Michelle L. Lewis

LESSEE:

**Vertical Bridge Development, LLC**  
a Delaware limited liability company

By: Bernard A. Borghel  
Name: \_\_\_\_\_

Title: Bernard A. Borghel  
Executive VP Operations

Date: \_\_\_\_\_

MAR 15 2019



STATE OF FLORIDA  
COUNTY OF PALM BEACH

On this 15<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Florida, duly commissioned and sworn, personally appeared Bernard A. Borghel, to me known to be the SR VP of Vertical Bridge Development, the entity that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Bernard A. Borghel is authorized to execute the said instrument on behalf of Vertical Bridge Development, LLC.

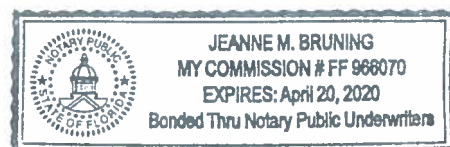
Witness my hand and seal the day and year first above written.

Jeanne M. Bruning  
Notary Public

Printed Name: JEANNE M. BRUNING

My Commission Expires:

4/20/20





## **EXHIBIT 1**

Legal Description of the Property (Parent Parcel)  
(may be updated by Lessee upon receipt of final legal description from title)

An interest in land, said interest being over a portion of the following described parent parcel:

Lots 1, 2 and 3, Block 24, HILLCREST ADDITION TO CLE ELUM, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 2 of Plats, Page 45, records of said County.

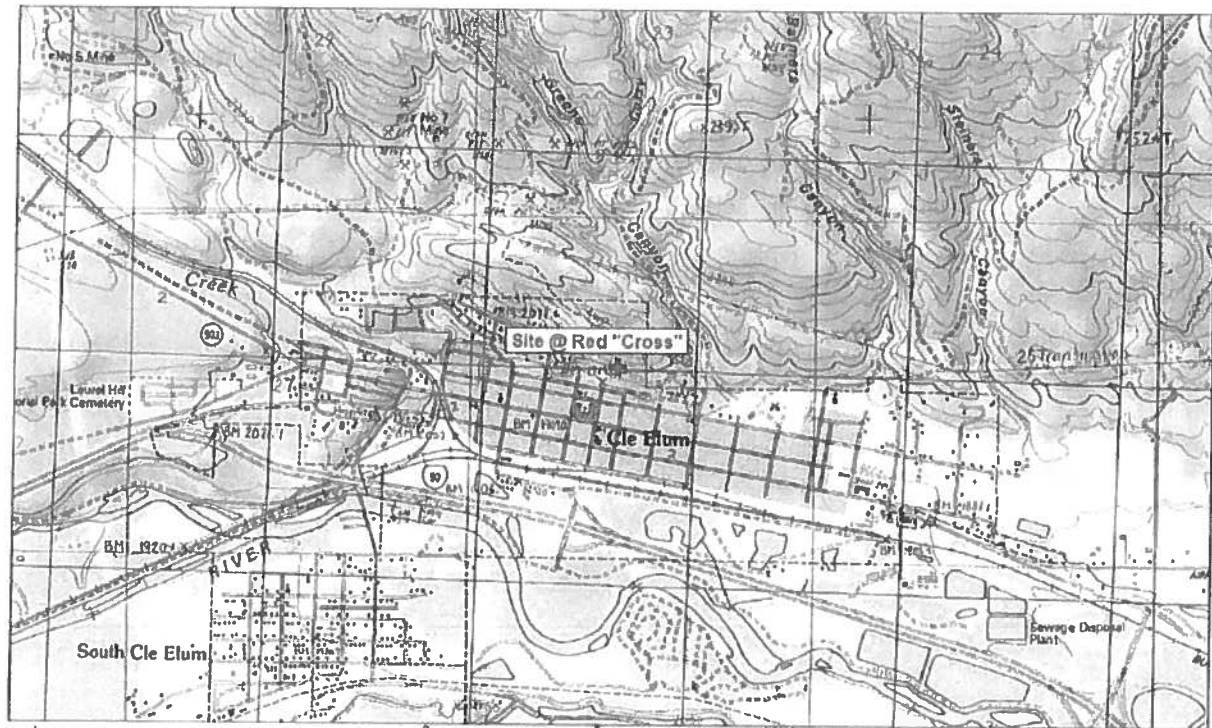
AND BEING a portion of the same property conveyed to City of Cle Elum, a Washington municipal corporation from Michael E Miller, as his sole and separate property by Statutory Warranty Deed dated November 17, 2015 and recorded November 20, 2015 in Instrument No. 201511200040.

Tax Parcel Nos. 621534, 950421

## EXHIBIT 2

### Premises

(If the below is a Site Sketch, then it may be replaced with a final survey and legal description of the Premises)



01808, 1282 r1

Map created with TOPO!® ©2002 National Geographic (www.nationalgeographic.com/topo)

SCALE: 1"= 2000'±

### I-A Report GEOGRAPHIC COORDINATES

Latitude:	47° 11' 51.07" N	(NAD 1983)
Longitude:	120° 55' 58.43" W	(NAD 1983)
Elevation-Ground:	2023.6 feet	(NAVD 1988)





COMMENCING AT THE FOUND BAR AND CAP AT THE NORTHWEST CORNER OF LOT 'B' AS SHOWN ON SURVEY RECORDED IN VOLUME 39 PAGE 149, RECORDS OF KITTITAS COUNTY, WASHINGTON;  
THENCE SOUTH 14°30'06" WEST 300.84 FEET TO A FOUND MONUMENT AT THE INTERSECTION OF PENNSYLVANIA AVENUE AND 5TH STREET;  
THENCE SOUTH 77°25'53" EAST 1091.92 FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 89°02'28" EAST 73.45 FEET;  
THENCE SOUTH 46°08'34" EAST 79.58 FEET;  
THENCE SOUTH 10°44'32" WEST 59.70 FEET;  
THENCE NORTH 46°08'34" WEST 166.01 FEET TO THE POINT OF BEGINNING;

CONTAINING 6,140 SQUARE FEET, MORE OR LESS.

Proposed Access and Utility Easement:

A TRACT OF LAND LOCATED IN THAT PORTION OF BLOCK 24, PLAT OF HILLCREST ADDITION TO CLE ELUM, RECORDS OF KITTITAS COUNTY, WASHINGTON, IN SECTION 26, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., DESCRIBED AS FOLLOWS:

SAID TRACT BEING A 20 FOOT STRIP OF LAND LYING 10 FEET OF BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE FOUND BAR AND CAP AT THE NORTHWEST CORNER OF LOT 'B' AS SHOWN ON SURVEY RECORDED IN VOLUME 39 PAGE 149, RECORDS OF KITTITAS COUNTY, WASHINGTON;  
THENCE SOUTH 14°30'06" WEST 300.84 FEET TO A FOUND MONUMENT AT THE INTERSECTION OF PENNSYLVANIA AVENUE AND 5TH STREET;  
THENCE SOUTH 77°25'53" EAST 1091.92 FEET;  
THENCE SOUTH 89°02'28" EAST 73.45 FEET;  
THENCE SOUTH 46°08'34" EAST 69.58 FEET TO THE POINT OF BEGINNING;  
THENCE NORTH 44°38'35" EAST 10.00 FEET;  
THENCE NORTH 46°08'34" WEST 134.46 FEET;  
THENCE NORTH 55°55'46" WEST 70.16 FEET;  
THENCE NORTH 51°13'09" WEST 15.23 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 83.00 FEET;  
THENCE ALONG SAID CURVE 46.82 FEET THROUGH A CENTRAL ANGLE OF 32°19'14";  
THENCE NORTH 83°32'23" WEST 22.94 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET;  
THENCE ALONG SAID CURVE 106.11 FEET THROUGH A CENTRAL ANGLE OF 20°15'59";

THENCE NORTH 63°16'24" WEST 48.40 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 428.70 FEET;

THENCE ALONG SAID CURVE 172.47 FEET THROUGH A CENTRAL ANGLE OF 23°03'00";

THENCE NORTH 86°19'25" WEST 1.08 FEET TO THE CENTERLINE OF THE ALLEY BETWEEN BLOCKS 17 AND 21 OF SAID PLAT OF HILLCREST ADDITION TO CLE ELUM;

THENCE ALONG SAID ALLEY CENTERLINE NORTH 89°02'28" WEST 518.69 FEET;

THENCE NORTH 73°38'27" WEST 94.96 FEET TO THE EASTERLY MARGIN OF PENNSYLVANIA AVENUE AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION;

SIDELINE TO BE LENGTHENED OR SHORTENED TO CONNECT WITH EACH OTHER AND THE TERMINATE AT THE EASTERLY MARGIN OF SAID PENNSYLVANIA AVENUE.

**EXHIBIT 3**

Memorandum of Lease

(Attached)

(Above 3" Space for Recorder's Use Only)

**Upon Recording Return to:**

Vertical Bridge Development, LLC  
750 Park of Commerce Drive, Suite 200  
Boca Raton, FL 33487  
Attn: Daniel Marinberg

**Site Name: Cle Elum DT**  
**Site Number: US-WA-5105**

**MEMORANDUM OF LEASE**

This Memorandum of Lease ("**Memorandum**") evidences a Telecommunications Facilities Lease Agreement (the "**Lease**") between the City of Cle Elum, a municipal corporation duly organized and existing under the laws of the State of Washington ("**Landlord**"), and Vertical Bridge Development, LLC, a Delaware limited liability company, whose mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 ("**Tenant**"), dated march 29<sup>th</sup>, 2019 (the "**Effective Date**"), for a portion (the "**Premises**") of the real property (the "**Property**") described in Exhibit A attached hereto.

Landlord hereby ratifies, restates and confirms the Lease and leases to Tenant the Premises, subject to the terms and conditions of the Lease. The Commencement Date of the Lease is \_\_\_\_\_. The Lease provides for the lease by Landlord to Tenant of the Premises for an initial term of five (5) years with six (6) renewal option(s) of an additional five (5) years each, and further provides:

1. The Lease restricts Landlord's ability to utilize, or allow the utilization of the Property or real property owned by Landlord which is adjacent or contiguous to the Property for the construction, operation and/or maintenance of communications towers and related facilities;

2. Tenant (and persons deriving rights by, through, or under Tenant) are the sole parties to market, use, or sublease any portion of the Property for communications or broadcast facilities during the term of the Lease (such restriction shall run with the land and be binding on the successors and assigns of Landlord);

3. The Premises may be used exclusively by Tenant including, without limitation, erecting, installing, operating and maintaining radio and communications towers, buildings, and equipment;

4. Tenant is entitled to sublease and/or sublicense the Premises, including any communications tower located thereon; and


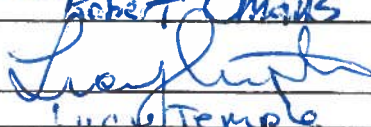
5. This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK, SIGNATURES  
BEGIN ON NEXT PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF LEASE as of the date last signed by a party hereto.

**WITNESSES:**

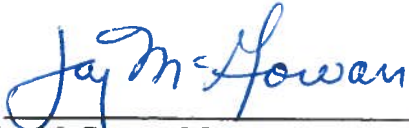
  
Name: Robert Owens  
  
Name: Lucy Temple

**APPROVED AS TO FORM:**

By:   
Alexandra L. Kenyon, City Attorney

**LANDLORD:**

**City of Cle Elum**  
a Washington municipal corporation

By:   
Jay McGowan, Mayor  
Date: March 29, 2019

[Landlord notary page to Memorandum of Lease]

STATE OF WASHINGTON  
COUNTY OF KITTITAS

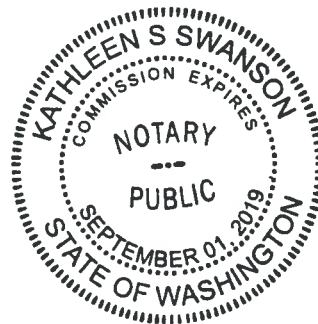
On this 29<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jay McGowan, to me known to be the Mayor of City of Cle Elum, the entity that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Jay McGowan is authorized to execute the said instrument on behalf of City of Cle Elum.

Witness my hand and seal the day and year first above written.

Kathleen S. Swanson  
Notary Public

Printed Name: Kathleen S. Swanson

My Commission Expires: 4/1/19



STATE OF WASHINGTON  
COUNTY OF ~~KITTITAS~~ King

On this 29<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Alexandra Kenyon, to me known to be the City Attorney of City of Cle Elum, the entity that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Alexandra L. Kenyon is authorized to execute the said instrument on behalf of City of Cle Elum.

Witness my hand and seal the day and year first above written.

Antoinette Marie Mattox  
Notary Public

Printed Name: Antoinette Marie Mattox

My Commission Expires: 3-6-23



[Tenant's Signature Page to Memorandum of Lease]

**WITNESSES:**

Rachel Williamson  
Name: Rachel Williamson

Michelle L. Lewis  
Name: Michelle L. Lewis

**TENANT:**

**Vertical Bridge Development, LLC**  
a Delaware limited liability company

By: B. A. Borghesi  
Name: Bernard A. Borghesi  
Title: Executive VP Operations  
Date: MAR 15 2019

STATE OF FLORIDA  
COUNTY OF PALM BEACH



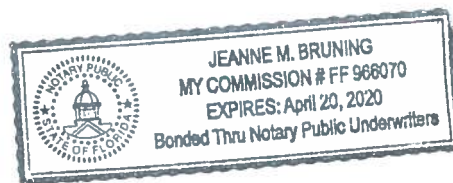
On this 15<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Florida, duly commissioned and sworn, personally appeared Bernard A. Borghesi, to me known to be the SEVP of Vertical Bridge Development, the entity that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Bernard Borghesi is authorized to execute the said instrument on behalf of Vertical Bridge Development, LLC.

Witness my hand and seal the day and year first above written.

Jeanne M. Bruning  
Notary Public

Printed Name: JEANNE M. BRUNING

My Commission Expires:  
4/20/20



**EXHIBIT A**

(TO MEMORANDUM OF LEASE)

The Property

(may be updated by Tenant upon receipt of final legal description from title)

An interest in land, said interest being over a portion of the following described parent parcel:

Lots 1, 2 and 3, Block 24, HILLCREST ADDITION TO CLE ELUM, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 2 of Plats, Page 45, records of said County.

AND BEING a portion of the same property conveyed to City of Cle Elum, a Washington municipal corporation from Michael E Miller, as his sole and separate property by Statutory Warranty Deed dated November 17, 2015 and recorded November 20, 2015 in Instrument No. 201511200040.

Tax Parcel Nos. 621534, 950421

Access and utilities serving the Premises (as defined in the Lease) includes all easements of record as well as that portion of the Property designated by Landlord and Tenant for Tenant (and Tenant's guests, agents, customers, lessees, sublessees and assigns) ingress, egress, and utility purposes to and from a public right-of-way.

Said interest being over land more particularly described by the following description:

Insert metes and bounds description of area