

**CITY OF MONROE  
RESOLUTION NO. 2013/029**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, DECLARING CERTAIN AIR SPACE SURPLUS TO THE LIMITED EXTENT SET FORTH IN THIS RESOLUTION, AUTHORIZING A LEASE WITH CONSTELLATION DATA COMMUNICATIONS DBA SKY VALLEY WIFI IN ORDER TO PERMIT LESSEE TO ATTACH MULTIPLE MAST ATTACHMENTS TO THE TOP OF THE WATER STORAGE RESERVOIR AS SET FORTH IN SAID LEASE

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WHEREAS, RCW 35.94.040 authorizes a City to lease or sell surplus property; and

WHEREAS, the City wishes to fully utilize public property to the fullest extent feasible and obtain reasonable return from unused public property for the benefit of the general taxpayers; and

WHEREAS, the City has space available atop a water storage reservoir suitable for construction of certain telecommunications antennae and attendant equipment; and

WHEREAS, the City Council claims it to be in the public interest to authorize the lease and is required by state statute to declare such property to be surplus to the needs of the City in order to lease public utility property; and

WHEREAS, the airspace is surplus to the needs of the City; and

WHEREAS, lease of the airspace atop the City's water storage could provide a reasonable return to the public, and through the provision of telecommunications services, benefit the citizens of the City of Monroe.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

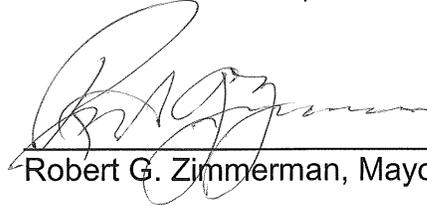
Section 1. The airspace atop the City's water storage reservoir and attendant ground space, designated as the "Premises" in the attached leasehold agreement is declared to be surplus to, but only to the limited extent necessary to authorize a lease of airspace pursuant to RCW 35.94.040.

Section 2. The lease attached hereto as Exhibit A and incorporated by this reference as fully as if herein set forth, is hereby approved. The Mayor is authorized to execute such lease on behalf of the City.

Section 3. Effective Date. This resolution shall take effect immediately upon passage.

ADOPTED by the City Council of the City of Monroe, at its regular meeting thereof, and APPROVED by the Mayor this 17th day of December, 2013.

CITY OF MONROE, WASHINGTON



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Robert G. Zimmerman, Mayor

(SEAL)

ATTEST:



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Elizabeth M. Smoot, CMC, City Clerk

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Commencement Date") between Lessor and Lessee (the "Parties") as defined below:

- A. Lessor is the owner of certain real property located in the City of Monroe, State of Washington, described in Exhibit A attached hereto and made a part hereof by this reference (the "Property").
- B. Lessee desires to lease an exterior portion of the building improvements upon the Property specified in Exhibit A consisting of multiple mast attachment(s) on top of water storage reservoir(s) (the "Premises) for a wireless antenna system, in addition to one (1) 4'x4' location at ground level of the site for antenna system(s), battery power, cables, computers, and any other necessary appurtenances, as well as rights for ingress and egress to the Property. The legal descriptions upon which the Premises are located is described in Exhibit A attached hereto and made a part hereof by this reference, and is depicted in Exhibit B, attached hereto and made a part hereof by reference.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1.****1.01 Terms**

In addition to the terms that are defined elsewhere in this Agreement, the following terms are used in this Agreement:

- (a) Property: As detailed in Exhibit A
- (b) Lessor: City of Monroe, WA
- (c) Lessor's Address: 806 W. Main St. Monroe, WA 98272
- (d) Lessor's Rent Payee: City of Monroe Finance Dept. - Accounts Payable
- (e) Lessor's Point of Contact: City of Monroe Public Works Director  
Address: 806 W. Main St. Monroe, WA. 98272  
Phone: 360-794-7400  
Email: bfeilberg@monrewa.gov  
Fax: 360-794-4007
- (f) Lessor Tax ID: 916001464
- (g) Lessee: Constellation Data Communications DBA Sky Valley WiFi
- (h) Lessee's Address: \_\_\_\_\_
- (i) Lessee's Point of Contact: Gregory W. MacPherson  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_
- (j) Commencement Date: \_\_\_\_\_, 2013
- (k) Expiration Date: \_\_\_\_\_, \_\_\_\_\_
- (l) Set Up Period: The period of three (3) months beginning on the Commencement Date. Lessee is to install and test Lessee's equipment during this period.
- (m) Initial term: Twelve (12) months immediately follow the Set up Period (as defined above).

- (n) Initial Rent: \$40.00 per month (commencing at the beginning of the Initial Term), per each antenna mast installed and two (2) high speed broadband internet connections to be used by the City of Monroe of sufficient capacity to allow for ongoing monitoring of water levels at Lake Tye and Woods Creek for the entirety of the lease term and any extensions.
- (o) Renewal Terms: two (2) consecutive periods of five (5) years each, beginning at the end of the Initial Term, followed by a month to month lease not to exceed twelve (12) months in term thereafter.

## ARTICLE 2

### **2.01 Background Check Requirements.**

Lessee and Lessee's employees, agents or subcontractors must pay applicable fees, submit to and pass a background check as specified by the Lessor prior to being granted access to the Property. The Lessor will notify the Lessee of the results of the background check within one (1) week of receipt. If the background check results are deemed as acceptable, then the Lessee, Lessee's employees, agents, and/or subcontractors as deemed acceptable by the Lessor, will be permitted to access the property. Backgrounds may be re-checked annually or as often as is deemed reasonable by the Lessor, if requested by the Lessor, at the sole expense of the Lessee.

### **2.02 Access.**

Lessee shall have non-exclusive right for access after the Commencement Date and until the Expiration Date. Access will be granted via request during normal business and operating hours (8a-5p Monday through Friday, excluding official holidays) to provide for the installation and maintenance of antennas, cables, wires, conduits, computers, and pipes over or along the Premises. Lessor will provide access for Lessee's authorized personnel, as specified herein, with one hour of advance notice of intent to access the Premises. In the event Lessee requests after hours or holiday access Lessee will be directly responsible for the actual costs incurred by Lessor in provision thereof.

### **2.03 Non-interference.**

A. By Lessee. In use of and in the utilization of access to the Premises, Lessee shall not interrupt or interfere with Lessor's operations. Facilities located upon the Property are used for public drinking water supply and emergency fire protection service activities. If any utilization of the Premises by Lessee interferes with such reasonable and necessary drinking water supply or emergency fire protection functions as desired by the Lessor, then Lessee shall either adjust its utilization to eliminate such interference within fourteen (14) days of written notification of interference, or this Agreement may be terminated by Lessor.

B. By Lessor. Lessor shall not unreasonably interrupt or interfere with Lessee's use of the Premises, specifically including without limitation any unreasonable interference with the operation and effectiveness of the Facility. Provided, that in the event of a breach or violation of this subsection (B), Lessee's sole remedy shall be to terminate this Agreement. Nothing herein shall give rise to any demand or claim for monetary damages, specifically including without limitation any incidental or consequential damages.

## ARTICLE 3.

### **3.01 Lease Agreement Term.**

The term of this Agreement shall begin on the Commencement Date and shall expire on the Expiration Date.

### **3.01.1 Termination During Set Up Period.**

If Lessee fails to install and test Lessee's equipment during the Set Up Period, then Lessor may terminate this Agreement without further obligation to Lessee. If Lessee determines, during the Set Up Period, that the Premises will not be suitable for installation, operation or maintenance of Lessee's equipment, then Lessee may terminate this Agreement without further obligation to Lessor.

### **3.02 Rent Payment.**

Each month during the Lease Agreement term following the Set Up Period, the Lessee shall pay the Rent to the department and address specified as Lessor's Rent Payee. Rent is due by the first (1<sup>st</sup>) day of the month. Rent not received by the 10<sup>th</sup> day of the month shall be deemed "late". Late rent shall incur a fee of twenty-five (\$25.00) dollars and shall accrue interest at 12 percent per annum or the highest lawful rate under Washington law. Partial rent payments shall be applied to charges in the chronological order in which they occurred.

### **3.03 Right to Extend.**

Subject to the provisions as referenced herein, Lessee shall have the right to extend the term of this Agreement for two (2) renewal periods of five (5) years for a total of eleven years. At the end of the renewal term, Lessee shall become a holdover tenant. At that time, this Agreement shall become a month-to-month lease unless Lessor gives a notice to vacate, or a new written agreement is established between the parties. Rent for such holdover period shall be 120% of the rent from the previous period of the regular lease prior to holdover. The maximum length of the holdover period shall be no more than twelve (12) months.

### **3.03.1 Notice of Right to Extend.**

Notice of the right to extend this Agreement shall be given by Lessee to Lessor at least six months prior to the requested renewal. The first notice shall be given six (6) months prior to the conclusion of the initial twelve (12) month period of the agreement. A condition of the right to renew shall be that Lessee shall be in compliance with all terms and conditions of the Agreement for the period prior to renewal.

### **3.04 Rent Price Adjustment.**

The Rent will be adjusted annually, on the anniversary of the Commencement Date, in accordance with the most current Annual Seattle-Tacoma-Bellingham Consumer Price Index – All Urban Consumers, as applied to the most current month rent amount due.

### **3.05 Lessee's Use.**

Lessee shall use the Premises exclusively for the purpose of constructing, maintaining, and operating a communications facility and uses incidental thereto (the "Facility"). Lessee shall not use, or cause or allow to be used, the Premises for any other purpose. The Facility shall consist of an antenna system mounted on an existing water reservoir and ground level space for equipment, including all necessary connecting appurtenances sufficient to be a fully operable communications facility for its intended licensed communications coverage areas. This may include radio transmission, computer and associated equipment, and batteries. All improvements, fees and permits shall be at Lessee's expense. Lessee shall maintain the Premises in reasonable condition, and all work performed at the site shall be in accordance

with industry best standard practices, shall have a neat and clean fit and finish and be completed in a workman like manner. All uses are subject to the limitations as specified herein.

**3.05.1 Plan Review.**

Separate from and independent of any applicable regulatory approval and/or permitting process, Lessor reserves the right to review, approve or reject in writing plans for the Premises, which approval shall not unreasonably be withheld. Lessor's review period shall be fourteen (14) calendar days from the date of receipt. The plans shall indicate the locations and dimensions of all equipment, and identify the access and utility locations which Lessee will use for the facility. Lessor's review period shall not be construed as a regulatory function. Lessee is solely responsible for obtaining and ensuring compliance with all required permits and approvals at Lessee's sole expense.

**3.05.2 Natural or Man Made Disaster.**

In the event of a declared public emergency or natural or man-made disaster, in order to protect the health, welfare, and safety of the community, Lessee may erect additional telecommunications facilities and install additional equipment of a temporary basis on the Premises to assure continuation of service. Lessee shall provide Lessor with written plans of the emergency changes within a reasonable time and in any case no later than fourteen (14) calendar days from the date of the disaster or declared emergency.

In the event of a declared public emergency or natural or man-made disaster, Lessor shall reasonably endeavor to provide Lessee's authorized personnel a reasonable opportunity to participate in discussions, meetings, conference calls, or other consultations associated with planning and response to the emergency situation. Lessee understands that Lessee's participation in such discussions shall be in an unofficial advisory capacity. Lessee's authorized personnel agree to participate in a spirit of good faith and to adhere to any meeting guidelines provided by the Lessor.

**3.06 Termination.**

This agreement may be terminated, without any penalty or further liability, on sixty (60) days' written notice as follows: (a) by either party on the occurrence of an express event or upon default of any covenant or term hereof by the other party, which termination event or default is not cured within sixty (60) days following receipt of notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); (b) by Lessee or Lessor if Lessee does not obtain or maintain any license, permit or other governmental approval necessary to the construction or operation of the Facility or Lessee's business; (c) by Lessor or Lessee, as the case may be, as provided in Section 3.01.1; (d) by Lessee if the Premises are or become unacceptable to Lessee under Lessee's design or engineering specification for its Facility or for the communications system to which the Facility belongs; or (e) by Lessor if Lessor determines, its sole discretion, that use of the Premises is needed for a public purpose.

**3.06.1 Property Removal.**

No later than sixty (60) days after the termination of this Agreement, by expiration of the term otherwise, Lessee will remove Lessee's personal property and fixtures and will restore the Premises to their condition on the Effective Date, reasonable wear and tear and casualty loss excepted. If time for removal causes Lessee to remain on the Premises after termination of this Agreement, Lessee shall pay rent at the then existing monthly rate or the existing monthly pro rata basis if based on a longer payment term, until such time as the removal of the personal property and fixtures is completed. Provided, that Lessor may, at Lessor's sole discretion and without recourse by Lessee, remove and dispose of any personal property, including without limitation the Facility, if the same has not been

timely removed from the Premises by Lessee. In such event, all costs of removal and disposal shall be charged to Lessee.

#### ARTICLE 4.

##### **4.01 Lessee's Insurance.**

Lessee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with Lessee's operations or the use of or entry onto the Property, including the Premises, by Lessee, Lessee's agents, representatives, employees or subcontractors.

4.01.1. Minimum Scope of Insurance. Lessee shall obtain insurance of the types described below:

4.01.1.1 Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover premises and contractual liability. Lessor shall be named as an insured under Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises endorsement CG 20 11 or a substitute endorsement providing equivalent coverage.

4.01.1.2 Property Insurance shall be written on an all-risk basis.

4.01.2 Minimum Amounts of Insurance Lessee shall maintain the following insurance limits:

4.01.2.1 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.

4.01.2.2 Property insurance shall be written covering the full value of Lessee's property and improvements with no coinsurance provisions.

4.01.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

4.01.3.1 Lessee's insurance coverage shall be primary insurance as respect to Lessor. Any insurance, self-insurance, or insurance pool coverage maintained by the Lessor shall be excess of Lessee's insurance and shall not contribute with it.

4.01.3.2 Lessee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Lessor.

4.01.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

4.01.5 Verification of Coverage. Lessee shall furnish Lessor with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee prior to the Commencement Date.

4.01.6 No Limitation. Lessee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Lessee to the coverage provided by such insurance, or otherwise limit Lessor's recourse to any remedy available at law or equity.

4.01.7. Failure to Maintain Insurance. Failure on the part of Lessee to maintain the insurance as required hereunder shall constitute a material breach of the Agreement, upon which Lessor may, after giving five business days notice to Lessee to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to Lessor on demand.

**4.03 Waiver of Subrogation.**

The Parties each waive any and all rights to recover against the other, or against the officers, directors, shareholder, partners, joint ventures, employees, agents, customers, invitees or business visitors of such other party, for any loss of damage to such waiving party arising from any cause covered by any property insurance required to be carried pursuant to this article or any other property insurance actually carried by such party. The Parties, from time to time, will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Property or the contents of either.

**4.04 Damage.**

If the Premises or a portion of the facility necessary for Lessee's occupancy is damaged during the term of this Agreement by any casualty which is insured under standard fire and extended coverage insurance policies, Lessor may, at its option, repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction. The amount of Rent paid by the Lessee shall be abated proportionately during any period in which there is substantial interference with the operation of Lessee's business. If Premises are damaged to the extent that it would take, in Lessee's reasonable judgment, more than thirty (30) days to repair, then Lessee may elect to terminate this Agreement by written notice to the Lessor.

**4.05 Indemnification.**

Lessee shall fully protect, defend, indemnify and hold Lessor, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, in any way arising out of or resulting from Lessee's use of or entry onto the Premises or the Property, or otherwise related to this Agreement, except for injuries and damages caused by the sole negligence of Lessor. Lessee's obligation to protect, defend, indemnify and hold harmless Lessor specifically includes, but is not limited to, any claim, injury, damage or loss arising out of or resulting from breaches of this Agreement or violations of any applicable law, regulation, conditions of any regulatory approval by Lessee. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Lessee and Lessor, its officers, officials, employees, and volunteers, the Lessee's liability hereunder shall be only to the extent of the Lessee's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

## ARTICLE 5.

### **5.01 Lessor Compliance.**

Lessor makes no representation whatsoever that, as of the date of this Agreement, the Property complies with any or all applicable laws, statutes, ordinances, rules, codes, regulations, orders, and interpretations of all federal, state, and other governmental or quasi-governmental authorities having jurisdiction over the Property (collectively, "Laws"), including, without limitation, the Americans with Disabilities Act of 1990.

### **5.02 Lessee Compliance.**

Lessee agrees to comply with all Laws relating to Lessee's use or occupancy of the Premises. At its sole cost and expense, Lessee will obtain all necessary permits and shall cause any of Lessee's equipment installed on the Premises to comply with all Laws, to the extent that such compliance is required solely as a result of Lessee's use or occupancy of the Premises.

### **5.03 Environmental Matters.**

(a) Lessee will be solely responsible for and will defend, indemnify, and hold Lessor, its agents and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Property associated with the Lessee's use of Hazardous Materials.

(b) "Hazardous Materials" means asbestos or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulation including, but not limited to, CERCLA.

## ARTICLE 6.

### **6.01 Utilities and Taxes.**

Lessee will be responsible for all arrangement and payment of any and all utilities required by its use of the Premises exceeding 100 watts maximum continuous draw per individual premise. If Lessee exceeds 100 watts maximum continuous draw per single premise, Lessee will arrange to have its utilities separately metered. Separate from and independent of rental payments hereunder, Lessee will pay the Washington State leasehold excise tax and any other applicable taxes as imposed.

### **6.02 Disclaimer.**

The Lessor hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of fitness for the Lessee's particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with this Agreement.

**6.02.01 Notification of Change of Land Use.**

Lessor agrees to notify Lessee promptly if at any time during the term of this Agreement Lessor decides to subdivide, sell, or change the status of the Premises or the Property, or if Lessor learns of any pending or threatened or contemplated actions, litigation, claims, condemnations, or other proceedings which would directly and adversely affect Lessee's use the Premises hereunder. If any of the actions or events described above, in Lessee's reasonable judgment, would materially impair Lessee's continued operation and maintenance of the Facility, Lessee may terminate this Agreement as provided in Section 3.06.

**6.03 Successor and Assigns.**

This Agreement may not be sold, assigned, or transferred at any time by Lessee without the written consent of the Lessor, such consent or denial to be based upon Lessor's sole subjective decision and authority, and any such assignment shall be in writing.

**6.04 Complete Agreement.**

Except as incorporated by application of relevant law, statute or regulation, it is hereby mutually agreed and understood that this Agreement contains all agreements, promises, and understandings between The Parties and that no other agreement, promises or understandings shall or will be binding on either Lessor or Lessee in any dispute, controversy, or proceeding at law, and any addition, variation, or modification to this Agreement shall be void and ineffective unless in writing and signed by the parties hereto.

**6.05 Applicable Law.**

This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the state of Washington. Jurisdiction shall be with the Superior Court of Snohomish County, Washington.

**6.06 Notices.**

All notices and other communications, required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service) addressed to the party for whom it is intended at its address set forth in Article 1. Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

**6.07 Authority.**

Each of the individuals executing the Agreement on behalf of the Lessee or the Lessor represents to the other party that such individual is authorized to do so by requisite action of the party to this Agreement.

**6.08 Dispute Notification.**

Any claim, controversy or dispute arising out of this Agreement shall be delivered by the claimant to the other party promptly (but in no event later than ten (10) days) after the start of the event giving rise thereto. Notice of the amount or extent of any claim, dispute or other matter with supporting data shall be delivered to the other party within fifteen (15) days after the start of such event. The representative with authority to negotiate on behalf of the other party will render a formal decision in writing within ten (10) days after receipt of the last submittal of the claimant, which either will (a) be specified as such by claimant (and which may be revoked within fifteen (15) days if the fifteen (15) day delivery period has

not passed), or (b) after fifteen (15) days beyond the start of the event giving rise thereto. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

**6.08.01 Dispute Resolution.**

The parties shall reasonably attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior representatives of each of the Parties.

**6.08.02 Reserved.**

**6.09 Recording.**

Upon prior review and approval, Lessor shall execute and Lessee shall be permitted to record, at any time, a memorandum of this Agreement.

**6.10 Execution and modification.**

This Agreement is binding only when signed by both parties. Any modifications or amendments must be in writing and must be signed by both parties.

**6.11 Force Majeure.**

Each party shall be excused from any breach of this Agreement which is proximately caused by government regulation, war, strike, act of God, or other similar circumstance normally deemed outside the control of well-managed businesses.

**6.12 Venue; Attorneys' Fees.**

The exclusive venue for any litigation arising under this Agreement shall lie in Snohomish County, Washington. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees.

**6.13 Headings.**

Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.

**6.14 Severability.**

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**6.15 Notice.**

Any notices required by this agreement shall be delivered to the following addresses:

**6.16 Regulatory Authority Preserved.** Lessee specifically acknowledges that Lessor is a municipal corporation organized under Title 35A RCW, and that Lessee's rights under this Agreement are subject to the exercise of the City of Monroe's regulatory police power. Nothing herein shall be construed as a waiver or limitation of the City's authority to adopt and enforce any and regulations deemed necessary in the City's sole discretion to protect and/or promote the public health, safety and welfare.

**6.17 Legal Compliance.** Lessee shall, at all times material to this Agreement, fully comply with any and all applicable federal, state and local regulations, and shall ensure such compliance with respect to any person or entity operating under Lessee's direction.

**6.18 No Agency/Employee Relationship.** Lessee shall not be construed as an agent of Lessor for any purpose. Nothing herein shall be construed as establishing an employment relationship between Lessor and any employee, agent or contractor of Lessee, or between Lessee and any employee, agent or contractor of Lessor.

**6.19 Condition of Property; Risk of Loss.** Except as expressly provided herein Lessee's entry onto the Property and use of the Premises is at Lessee's own risk. Lessee accepts the Premises and Property "AS IS" and "WHERE IS", with no assurances and/or warranties, express or implied, except those expressly set forth herein. Lessee shall be and remain exclusively responsible for the safety and protection of its employee, agents and contractors, as well as the protection and preservation of any equipment, tools or materials owned, operated other otherwise used by Lessee, including but not limited to the Facility. Lessor shall have, no, and expressly disclaims any, responsibility for such safety, preservation and/or protection. Without prejudice to the foregoing, Lessee expressly acknowledges that, unless directly caused by the willful, intentional or malicious acts of the City, the City shall in no manner be responsible for any damage to or loss of the Facility.

**6.20 Public Records.** Lessee expressly acknowledges that the Lessor is an "agency" as defined by Chapter 42.17 RCW, and is fully subject to the provisions governing the disclosure of public records codified at Chapter 42.56 RCW. To the extent required or otherwise authorized by said statutes or other applicable law:

6.20.1. Any public records submitted to or generated by the Lessor in connection with this Agreement are potentially subject public to inspection and copying upon request. Lessee expressly waives any claim or cause of action against the Lessor arising out of such disclosure.

6.20.2. Lessee shall fully cooperate with and assist the Lessor with respect to any request for public records received by the Lessor and related to any public records generated, produced, created and/or possessed by Lessee and related to this Agreement. Upon written demand by the Lessor, the Lessee shall furnish the Lessor with full and complete copies of any such records within five business days. Lessee's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the Lessor incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Lessee shall fully indemnify and hold harmless the Lessor.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

**6.21 Nonexclusive Use.** This Agreement does not preclude Lessor from granting similar leases, rights, licenses, franchises or other privileges to other persons or entities for any purpose with respect to any portion of the Property except the specific area of the Premises designated under this Agreement, provided that such leases, rights, licenses, franchises or other privileges do not unreasonably interfere with Lessee's use of the Premises, specifically including without limitation any unreasonable interference with the operation and effectiveness of the Facility. Provided, that in the event of a breach or violation of this section, Lessee's sole remedy shall be to terminate this Agreement.

Nothing herein shall give rise to any demand or claim for monetary damages, specifically including without limitation any incidental or consequential damages. Without prejudice to the foregoing, Lessor specifically reserves the right to access and utilize all portions of the Property except the Premises at any time and for any reason.

**6.22 Liens.** Lessee shall refrain from filing any liens or encumbrances against the title to the Property, and shall prevent any employee, agent or contractor of Lessee from filing any such liens or encumbrances. Lessee shall cause any such lien or encumbrance to be promptly removed at Lessee's sole expense. PROVIDED, that nothing herein shall be construed as an admission or acknowledgement that the Property is subject to lien under Washington law.

**6.23 Emergency Cost Recovery.** Lessee shall promptly and fully reimburse Lessor for any expenses Lessor incurs in response to any emergency involving the Facility or Lessee's entry onto or use of the Premises.

**6.24. No Third-Party Beneficiary.** This Agreement is intended and executed for the sole benefit of the signatory parties. Nothing herein shall be construed as creating any enforceable rights or causes of action in or for any other person or entity.

**6.25 Nonwaiver; Cumulative Remedies.** The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option herein conferred upon said party, shall not be construed as a waiver or relinquishment of any such covenant, agreement or option as against the other party. All available legal remedies are cumulative and not exclusive.

806 W. Main St.

Monroe, WA. 98272

\_\_\_\_\_  
Lessor

\_\_\_\_\_  
Lessee

**EXECUTION DATE**

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

**CITY OF MONROE, WASHINGTON**

  
\_\_\_\_\_  
**Robert G. Zimmerman, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Elizabeth M. Adkisson Smoot, CMC, City Clerk,**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**J. Zachery Lell, City Attorney**

**LESSEE (NAME, TITLE, SIGNATURE):**

\_\_\_\_\_  
**Gregory W. MacPherson, President  
Sky Valley WiFi**

**APPENDIX A**

1. Trombley Hill Reservoir - 13125 191 AVE SE Monroe, WA 98272
2. Ingraham Hill Reservoir – 13803 Ingraham Rd. Monroe, WA 98272
3. North Hill Reservoir – 10805 202<sup>nd</sup> AVE SE Monroe, WA 98272