

**Site License Addendum  
to  
Master License Agreement for Location of Facilities**

**STC FIVE LLC – South Mercer Substation – Tower Only site**

This Site License Addendum ("SLA"), dated as of February 7, 2013, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and STC FIVE LLC, a Delaware limited liability company ("STC FIVE"), with reference to that certain Master License Agreement for Location of Facilities, dated April 5<sup>th</sup>, 2011, between PSE and STC FIVE (the "MLA"). In connection with the MLA, the Parties have agreed to incorporate and make a part of the MLA the terms set forth in this SLA. All capitalized terms not otherwise defined in this SLA will have the meanings set forth in the MLA.

**Section 1. Description of Site.** The following Site(s) will be covered by this SLA:

The site is located at PSE's South Mercer Substation, located at 8477 SE 68<sup>th</sup> Street, Mercer Island, WA. This is an existing steel pole tower site. STC FIVE equipment at the site includes the free standing steel pole tower and fence which surrounds the wireless equipment, owned by third parties under separate SLAs, on PSE property. See PSE approved drawings.

**Section 2. Equipment.** The permitted Equipment for the Site(s) covered by this SLA are:

See attached Appendix 1

**Section 3. Site Development Plan.** The Site Development Plan for the Site(s) covered by this SLA is as follows:

See attached Appendix 2.

**Section 4. SLA Term.** The SLA Term for this SLA will be as set forth in Section 16.1 of the MLA based on the following SLA Commencement Date:

SLA Commencement Date: February 7, 2013

**Section 5. Compensation.** The Annual Fees and other amounts payable by STC FIVE in connection with the Site(s) covered by this SLA will be as follows:

- See attached Appendix 3.

**Section 6. Additional Terms**

As conditions to approval of this Permit, the following also apply:

**6.1** STC FIVE shall provide complete, detailed, jurisdictionally approved final construction drawings before construction begins for PSE's review and approval. Said drawings shall show in detail the following:

**6.1.1** Grounding design of equipment and fencing in accordance with the National Electrical Safety Code provisions in Section 9, and PSE's design policies.

**6.1.2** Location of the telephone source and/or telephone cable installation from source to the equipment cabinets.

**6.1.3** Field verification and staking of the location of equipment, pole and of property lines establishing that proposed facility location lies as noted,

**6.1.4** Appropriate separation distance between any part of STC FIVE's facilities and the nearest electrical conductor,

**6.1.5** Attachment of all antennas, equipment and cabling to the pole, and

**6.1.6** If relevant, landscape design showing acceptable vegetation compatible with electrical facilities and/or substations.

**6.2** Any comments and conditions noted during PSE's review process, including:

**6.3** No construction shall commence prior to the receipt and written approval by PSE of the final construction drawings and evidence of authorization by all governmental agencies having jurisdiction over the project. An on site pre-construction meeting shall be scheduled prior to construction and as-built drawings and color photos showing the completed installation (pole and base equipment) shall be provided after completion of construction.

**6.4** If a PSE pole or any of its facilities are required and are to be located on private property for which PSE does not have an existing, or adequate easement, then STC FIVE will need to acquire this new easement for PSE prior to construction.

**6.5** Where PSE shall install a HH or other facilities related to NCC in right-of-way (ROW) in order to provide electrical service to this site, STC FIVE shall be responsible for the cost of relocating such facilities, should it be required as the result of any jurisdictional directed improvement or relocation.

**6.6** STC FIVE shall be responsible for structural review of the steel pole tower and any future modifications and/or attachments to confirm the pole will support current and/or future loading.

**6.7** No digging or trenching on PSE property without express approval from PSE.

**6.8** Advance notification prior to any site access. All work on PSE facilities shall be performed by PSE designated personnel. Any work or activity that impacts the area within the fenced area of the substation, including the air space above the station, along with all necessary outages, shall be coordinated and approved by PSE.

Depending on the time of year, scheduling of outages, if required, may cause unforeseen delays in the construction and/or maintenance of the facility.

**6.9** STC FIVE, equally and in partnership with the other wireless leasees at this location shall be responsible for the maintenance of all jurisdictionally mandated additions to the site's landscaping and for vegetation control of the lease area. PSE reserves the right to perform such maintenance activities, with STC FIVE responsible for its proportional share, should PSE determine that landscape maintenance is required and no action has occurred within 30 days of notice of their requirement by PSE. PSE shall institute a Site Landscape Maintenance Agreement, to include all wireless leasees at this location. Failure to enter into such an Agreement shall be cause for termination of this permit.

**6.10** STC FIVE shall provide PSE a copy of the requirements for the steel pole tower including antenna types, sizes and loadings, mounting hardware attachments for antenna mountings, locations of all antenna and cabling and any other requirements. STC FIVE shall be responsible for structural review of the steel pole tower. PSE will also determine the area available, if any, for STC FIVE's use. In the event PSE decides that the space required by STC FIVE cannot be provided, or that due to construction, policy or outage concerns siting a PCS facility is not suitable, PSE may withhold site approval.

#### **Section 7. Miscellaneous**

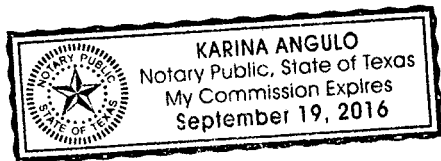
This SLA, and the use of the Site(s) covered by this SLA, will be governed in all respects by the terms and conditions set forth in the MLA, as supplemented by this SLA. In the event of a conflict between the terms and conditions of this SLA and the terms of the MLA, the terms of the MLA will govern and control. The terms and conditions of the MLA, as supplemented by this SLA, set forth the entire agreement between STC FIVE and PSE with respect to the Site(s) covered by this SLA.

<p><b>STC FIVE:</b></p> <p>STC FIVE LLC</p> <p>By: GLOBAL SIGNAL ACQUISITIONS II LLC</p> <p>As its: Attorney in Fact</p> <p>By: <u><i>Lisa A. Sedgwick</i></u></p> <p style="text-align: center;">Lisa A. Sedgwick Print Name RET Manager</p> <p>Its: _____</p> <p>Date Signed: <u>01/17/13</u></p> <p>Address:</p> <p>STC Five LLC c/o Crown Castle USA Inc. E. Black Hawk, General Counsel 2000 Corporate Drive Canonsburg, PA 15317 Attn: Legal Department</p>	<p><b>PSE:</b></p> <p>Puget Sound Energy, Inc.</p> <p>By: <u><i>Brett Bolton</i></u></p> <p style="text-align: center;">Brett Bolton</p> <p>Its: Manager, Real Estate</p> <p>Date Signed: <u>2/7/13</u></p> <p>Address:</p> <p>P.O. Box 97034 Bellevue, WA 98009-9734 Attn: Joint Use Department</p>
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STATE OF Texas )  
COUNTY OF Harris )

On this 17 day of January, 2013, before me, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared Lisa A. Sedgwick to me known to be the RET Manager at, Global Signal Acquisitions II LLC that executed the foregoing instrument and acknowledged the same to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



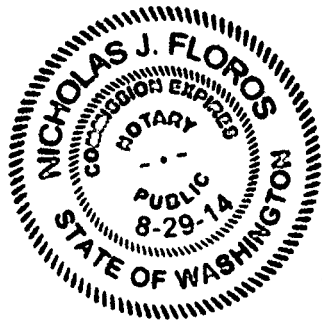
*Karina Angulo*  
Print Name: Karina Angulo  
Notary Public in and for the State of TEXAS,  
Residing at HOUSTON, TX  
My commission expires 9-19-16

STATE OF WASHINGTON )

COUNTY OF KING )

On this 7<sup>TH</sup> day of FEBRUARY, 2013 before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Brett Bolton, to me known to be the person who signed as the Manager, Real Estate of PUGET SOUND ENERGY, INC., the Corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument on behalf of said Corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



*Nicholas J Floros*

Print Name: NICHOLAS J. FLOROS  
Notary Public in and for the State of Washington,  
Residing at SEATTLE WASH  
My commission expires 8-29-2014

## **APPENDIX 1**

### **Equipment**

- STC FIVE equipment at the site includes the free standing steel pole tower and fence which surrounds the wireless equipment, owned by third parties under separate SLAs, on PSE property.

## **APPENDIX 2**

### **Site Development Plan**

Final site development plans to be submitted by STC FIVE prior to construction for review and approval by PSE. This is an existing steel pole tower site. STC FIVE equipment at the site includes the free standing steel pole tower and fence which surrounds the wireless equipment, owned by third parties under separate SLAs, on PSE property. See PSE approved drawings.

## APPENDIX 3

### Annual Fees

- Cost of utilities to service the permitted use to be borne by STC FIVE.
- Cost of poles/structure for STC FIVE facilities to be borne by STC FIVE.
- It is understood that STC FIVE will secure such additional rights as needed for its facilities.

#### **Annual Fees:**

The Annual Fees for the Site under this SLA will be as follows:

- From the date of this SLA (i.e., February 7, 2013) through April 4<sup>th</sup>, 2016, the [REDACTED]
- Beginning on April 5, 2016 (the "Escalation Date"), the **Annual Rate will be** [REDACTED] for the five (5) year period immediately following the Escalation Date and will thereafter increase at the rate of [REDACTED] on each five (5) year anniversary of the Escalation Date.
- The Annual fees for Sprint Spectrum's wireless site will continue under Sprint Spectrum's South Mercer Substation site #SE63XC112 SLA and associated MLA.
- \* If and when the Sprint Spectrum wireless site under Sprint Spectrum's South Mercer Substation SLA site #SE63XC112 is terminated and/or decommissioned, STC FIVE's Annual Fee for this Tower Only Site will increase, with escalators, to the standard Annual Rental Rate for Raw Land Sites identified in Appendix 3 of STC FIVE's MLA. For example, STC FIVE's annual rental rate for this Site would **increase to** [REDACTED] until April 4, 2016. Beginning on April 5, 2016 (the "Escalation Date"), the **Annual Rate will be** [REDACTED] for the five (5) year period immediately following the Escalation Date and will thereafter increase at the rate of [REDACTED] on each five (5) year anniversary of the Escalation Date.



NMLA 0045  
cc  
Lease ID

MASTER AGREEMENT  
FOR  
LOCATION OF FACILITIES  
BETWEEN  
PUGET SOUND ENERGY, INC. *PL*  
AND  
US WEST COMMUNICATIONS *Tenant*

COPY

DATED 7-15, 1997

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**MASTER AGREEMENT  
FOR  
LOCATION OF FACILITIES**

**(US WEST)**

This Agreement, dated as of July 15, 1997, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and US WEST Communications Wireless Group, a division of US WEST Communications Inc., a Colorado corporation ("US WEST"). PSE and US WEST are at times referred to herein where appropriate individually as a "Party" and collectively as the "Parties".

**Recitals**

- A. PSE is an investor-owned utility operating in the State of Washington.
- B. US WEST is a telecommunications company which is or intends to begin operating in the State of Washington.
- C. PSE has an interest in certain real property identified in the attached Exhibit A, as the same may be amended from time to time by mutual written agreement of the Parties (individually, a "Proposed Site" and collectively, the "Proposed Sites").
- D. US WEST wishes to use one or more of the Proposed Sites for purposes of locating unmanned communications equipment and related facilities (the "Equipment").
- E. PSE is willing to permit US WEST to use a Proposed Site (or designated portion thereof) to the extent the Parties hereafter agree in writing (i.e., in the manner provided in this Agreement) to permit such use by US WEST for such purposes (individually, a "Site" and collectively, the "Sites"), all subject to and in accordance with the terms of this Agreement.

**Agreement**

Therefore, PSE and US WEST agree as follows:

**Section 1. Scope**

This Agreement sets forth the terms and conditions upon which a Proposed Site (or designated portion thereof) is reviewed and selected by the Parties for potential use by US WEST as a Site. This Agreement shall apply only to the Proposed Sites and not to any other property of PSE. This Agreement does not, nor shall it be interpreted or construed to, grant to US WEST any right or interest in or to any property or the right to use any property (including, without limitation, any one or more of the Proposed Sites) for any purpose; rather, US WEST may use a Proposed Site (or designated portion thereof) only upon execution by the Parties of a written site permit covering the Proposed Site (or designated portion thereof) in accordance with Sections 2 and 3 (a "Site Permit"), and then only in strict accordance with the terms and conditions of the applicable Site Permit.

## Section 2. Site Permits

US WEST's use of a Proposed Site shall be subject to US WEST's execution and delivery to PSE, and PSE's written acceptance of, a Site Permit on terms and conditions substantially in the form of "General Conditions" attached hereto as Exhibit B covering a Proposed Site. Without limiting the generality of the foregoing, each Site Permit shall, at a minimum:

- (a) include a list of the specific Equipment to be installed at the Site;
- (b) include a site development plan which describes in detail any installation, alteration, maintenance, repair, relocation, removal and/or other work to be undertaken at the Site, and which describes and identifies in detail the precise location of the Equipment to be installed at the Site; and
- (c) include such additional terms and conditions as PSE may require.

A Site Permit shall not take effect unless and until it is accepted in writing by PSE (i.e., each proposed Site Permit shall have the legal status of an offer to enter into a Site Permit).

## Section 3. Site Permit Submittal and Approval

**3.1** In the event US WEST at any time during the Term desires to use a Proposed Site as contemplated by this Agreement, US WEST shall submit to PSE a fully completed proposed Site Permit for the Proposed Site. Each proposed Site Permit shall be duly executed by an authorized agent of US WEST prior to its submittal to PSE. Unless otherwise directed by PSE, US WEST shall submit each proposed Site Permit to:

Puget Sound Energy, Inc.  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734  
Attention: Real Estate Department

**3.2** Prior to US WEST's submittal of a proposed Site Permit, PSE shall, upon request, provide US WEST reasonable access to the applicable Proposed Site to conduct engineering surveys, inspections or other reasonably necessary tests related to the contemplated installation of Equipment. Solely for purposes of this paragraph 3.2, such access shall be a "Permitted Activity" under and subject to Sections 16 and 17 of the General Terms of Site Permit attached hereto as Exhibit B (which provisions are incorporated herein by this reference). Such access shall also be subject to such other reasonable conditions and limitations as may be imposed by PSE. Upon request, US WEST shall deliver to PSE copies of the results of all such surveys, inspections and tests conducted by US WEST.

**3.3** In connection with PSE's review of a proposed Site Permit, US WEST shall promptly provide such information relating to the proposed Site Permit as PSE may reasonably request. US WEST understands and acknowledges that any structural work proposed to be undertaken at a Proposed Site, or any work proposed to be undertaken involving a material alteration of any portion of a Proposed Site, must be approved by a licensed structural engineer at US WEST's sole cost and expense.

3.4 Upon receipt of each proposed Site Permit, PSE shall undertake such review of the proposed Site Permit as determined by PSE to be necessary and appropriate. Upon completion of its review of the proposed Site Permit, PSE may (a) accept the proposed Site Permit in the form proposed by US WEST, in which case PSE shall accept the proposed Site Permit in writing and deliver its written acceptance to US WEST, or (b) conditionally accept the proposed Site Permit subject to such modifications, alterations, and/or supplemental terms as PSE may deem appropriate, in which case PSE shall conditionally accept the proposed Site Permit in writing as modified, altered and/or supplemented, and deliver the conditionally accepted proposed Site Permit to US WEST for review and execution by US WEST as modified, altered and/or supplemented, or (c) reject the proposed Site Permit, in which case PSE shall promptly notify US WEST of such rejection.

3.5 PSE shall endeavor to notify US WEST of its acceptance, conditional acceptance or rejection of a proposed Site Permit within twenty (20) business days after its receipt by PSE; provided, however, that US WEST understands and acknowledges that the submittal to PSE of multiple proposed Site Permits will likely delay notification by PSE beyond the above twenty (20) day period; and provided further that under no circumstances shall PSE be liable in any way to US WEST for any failure to accept, conditionally accept or reject a proposed Site Permit within such twenty (20) day period.

3.6 PSE shall not have any obligation to accept, conditionally accept or otherwise execute any proposed Site Permit and shall not have any liability on account of its refusal or other failure to accept, conditionally accept or execute any proposed Site Permit. US WEST may withdraw a proposed Site Permit by giving PSE written notice of such withdrawal at any time prior to PSE's acceptance of the proposed Site Permit in accordance with paragraph 3.4.

3.7 In the event PSE delivers a conditionally accepted proposed Site Permit to US WEST under paragraph 3.4(b), US WEST shall (a) execute and deliver the proposed Site Permit as modified, altered and/or supplemented by PSE, or (b) promptly notify PSE in writing of any objections to the modifications, alterations and/or supplemental provisions proposed by PSE, in which case the Parties shall, upon the request of either Party, endeavor to agree upon a Site Permit acceptable to both Parties. A proposed Site Permit which has been conditionally accepted by PSE and delivered to US WEST shall not take effect unless and until it is executed by US WEST under this paragraph 3.7(a) above, or unless and until the parties have agreed in writing upon any further revisions to the proposed Site Permit necessary to make it acceptable to both parties under this paragraph 3.7(b) above.

#### **Section 4. Reimbursement**

4.1 In addition to any other amounts payable by US WEST to PSE under this Agreement, US WEST shall pay PSE an application fee in the amount specified in paragraph 4.2 for the processing and review of each proposed Site Permit and, in addition, shall reimburse PSE for any and all costs and expenses which have been pre-approved by US WEST in writing and are reasonably incurred by PSE in connection with all other services performed by PSE at the request of US WEST (whether prior to or after the submittal of the proposed Site Permit) within thirty (30) days after submittal of a statement of such costs and expenses and reasonable supporting documentation. Without limiting the generality of the foregoing, amounts recoverable by PSE hereunder shall consist of fully allocated costs for labor (including but not limited to all payroll costs and overhead and all applicable engineering, supervision, and administrative overheads), transportation, employee expenses, attorneys fees, reprographic services, supplies, telephone service and other expenses. Without limiting any obligation of PSE specified elsewhere

in this Agreement, this paragraph 4.1 shall not obligate or be construed to obligate PSE to perform any service or to take any action whatsoever with respect to the Equipment, a proposed Site Permit or any request made by US WEST pursuant to this Agreement or otherwise.

4.2 The amount of the application fee payable by US WEST under paragraph 4.1 shall, as of the date of this Agreement, be [REDACTED] PSE may change the amount of such application fee as of the end of each period of five (5) consecutive years during the Term (e.g., as of the fifth (5th), tenth (10th) and fifteenth (15th) anniversaries of the date of this Agreement) by giving US WEST written notice of such change at least thirty (30) days prior to the end of the applicable period.

4.3 PSE shall invoice US WEST for all amounts payable by US WEST to PSE under this Agreement. US WEST shall pay each such invoice in full within thirty (30) days after US WEST's receipt thereof, which such receipt shall be deemed to have occurred within three (3) days of the date the invoice is deposited in the U.S. mail, and addressed to US WEST at the address set forth below.

4.4 US WEST shall pay to PSE interest, compounded daily, at the rate of [REDACTED] per month or the maximum rate permitted by applicable law, whichever is less, on any amounts not paid to and received by PSE when due under this Agreement, from the date due until the date payment is received by PSE. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by US WEST.

## Section 5. Term

5.1 The term of this Agreement (the "Term") shall commence on the date of this Agreement and shall automatically terminate upon the first of the following to occur:

- (a) The twenty (20) year anniversary of the commencement of the Term, or
- (b) The Parties agree in writing to terminate the Term, or
- (c) US WEST becomes insolvent, makes an assignment for the benefit of creditors or becomes the subject of any petition or order in bankruptcy, whether voluntary or involuntary, or in any other proceeding under any bankruptcy, insolvency or receivership law and, in the case of any involuntary bankruptcy, insolvency or receivership petition, such petition is not dismissed within sixty (60) days after the filing thereof, or
- (d) US WEST is in default of any obligation owing under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice from PSE regarding such default, or
- (e) An Event of Default (as defined in the applicable Site Permit) has occurred with respect to [REDACTED] or more of the Site Permits executed by the Parties.

5.2 Upon termination of the Term for any reason, all Site Permits in effect on the date of termination will automatically and immediately terminate and, except as otherwise provided in the applicable Site Permit (i.e., with respect to the survival of specific provisions), be of no further force or effect.

## **Section 6. Assignment; Successors and Assigns**

US WEST shall not assign this Agreement or any portion of its rights in this Agreement, except as follows:

- (a) to any person or entity that controls, is controlled by or under common control with US WEST (the "Acquiring Affiliate"); provided that US WEST gives PSE written notice of any such assignment or transfer and pays all amounts then outstanding and owing to PSE under this Agreement; provided further that the Acquiring Affiliate certifies to PSE in writing (and provides such documents as may be requested by PSE to establish to PSE's reasonable satisfaction) that the Acquiring Affiliate (i) will assume all of the obligations of US WEST under this Agreement, and (ii) is financially able to and will comply with all of the provisions of this Agreement; and provided further that US WEST furnishes to PSE such information regarding the Equipment affected by such assignment or transfer as may reasonably be requested by PSE;
- (b) to US WEST's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by US WEST, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of US WEST under this Agreement; or
- (c) to any other person or entity with the prior written consent of PSE.

Except as specifically provided in (a) through (c) above, any assignment or apportionment, or purported assignment or apportionment, of this Agreement, whether it be express, by operation of law or otherwise, shall be voidable by PSE. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

## **Section 7. Entire Agreement**

The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the subject matter hereof. This Agreement may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.

## **Section 8. Severalty**

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

## **Section 9. Survival**

All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

## **Section 10. Headings**

The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

## **Section 11. Nonwaiver**

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

## **Section 12. Notices and Other Communications**

Any notice, request, approval, consent, instruction, direction or other communication given by either PSE or US WEST to the other under this Agreement shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person or position specified in this Agreement. Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this section.

## **Section 13. Regulatory Approvals**

To the extent this Agreement and any parts of this Agreement are subject to the authority of regulatory agencies having jurisdiction over PSE or US WEST, each Party shall promptly submit this Agreement to the regulatory agencies having such jurisdiction over such Party and shall take such additional action as may reasonably be required to promptly obtain any required approvals or other action by such agencies.

## **Section 14. Representation by Counsel**

The Parties acknowledge and agree that they have been represented by counsel and that each of the Parties has participated in the drafting of this Agreement. Accordingly, it is the intention and agreement of the Parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any Party hereto by reason of the responsibilities in connection with the preparation of this Agreement.

## **Section 15. Force Majeure**

If a Party is delayed or hindered in, or prevented from performance required under this Agreement (other than any delay or failure relating to payment of money, including, without limitation, all reimbursable costs and expenses described elsewhere in this Agreement) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of the such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.



**Section 16. Applicable Law**

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

<p><b>For US WEST:</b></p> <p><b>U S WEST Communications, Inc.</b></p> <hr/> <p>By: <u>Shirley Attler 7/11/97</u> Its: <u>Attorney-in-Fact</u></p> <p><b>U S WEST Communications Wireless Group</b></p> <hr/> <p>By: <u>[Signature]</u> Its: <u>V.P. OPERATIONS &amp; ENGINEERING</u></p> <p><b>Date Signed:</b> <u>7-15-97</u></p> <p><b>Address:</b></p> <p>U S WEST Communications Wireless Group 405 110th Avenue NE, #209 Bellevue, WA 98004 Attn: Regional Real Estate Manager</p>	<p><b>For PSE:</b></p> <p><b>Puget Sound Energy, Inc.</b></p> <hr/> <p>By: <u>[Signature]</u> Roger S. McNulty Director Corporate Facilities</p> <p><b>Date Signed:</b> <u>7/8/97</u></p> <p><b>Address:</b></p> <p>P.O. Box 97034 OBC-11N Bellevue, WA 98009-9734 Attn: Real Estate Department</p>
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**LIST OF EXHIBITS  
TO  
MASTER AGREEMENT**

<u>Exhibit</u>	<u>Title</u>
A	Proposed Sites
B	General Conditions

**EXHIBIT A**

**Proposed Sites**

## EXHIBIT B

### SITE PERMIT (Pole or Tower Site)

This Permit, dated as of \_\_\_\_\_, 1997, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and US WEST Communications Wireless Group, a division of US WEST Communications Inc., a Colorado corporation ("US WEST"). PSE and US WEST are at times referred to herein where appropriate individually as a "Party" and collectively as the "Parties".

The Parties agree as follows:

1. **Permit.** For and in consideration of the mutual benefits to be derived therefrom, PSE hereby grants permission to US WEST, subject to the terms and conditions of this Permit, to use the real property described in the attached Appendix 1 (the "Site"). The rights and obligations of PSE and US WEST arising under this Permit will apply to and be binding upon their respective officers, employees, agents and representatives, and its suppliers and subcontractors of any tier acting on their behalf in connection with the performance of the Work (as defined below) or this Permit (collectively, the "Support"). Each party shall be solely responsible for the performance, nonperformance, acts and omissions of its Support.

2. **Use of the Site.** US WEST shall have the right to use the Site for the purpose of undertaking the following activities (the "Permitted Activities"):

2.1 installation, operation and maintenance of the equipment specified in the attached Appendix 2 (the "Equipment") in accordance with the site development plan attached hereto as Appendix 3 (the "Site Development Plan") and all other provisions of this Permit; and

2.2 performance of the installation, maintenance, repair, relocation, removal and other work specified in the Site Development Plan (collectively, the "Work") in accordance with the Site Development Plan and all other provisions of this Permit; and

2.3 obtaining, at US WEST's sole cost and expense, telephone service from any utility company that provides such service to the Site, and arranging for the installation of a separate meter and main breaker, subject to PSE's right to approve the exact location of proposed utility routes and the manner of installation; and

2.4 access to and from the Site for purposes of undertaking the activities specified in paragraphs 2.1, 2.2 and 2.3, in accordance with the following:

2.4.1 access for construction, routine maintenance and repair and other non-emergency visits shall only be during normal business hours (defined as Monday through Friday, 8 am to 5 pm) unless otherwise agreed upon by the Parties;

2.4.2 in the event of emergency, US WEST may access the Site twenty-four (24) hours per day, seven days per week, by calling the PSE emergency telephone number set forth in paragraph 7 and requesting such access;

2.4.3 access to the Site may be by foot or motor vehicle, including trucks; and

2.4.4 access to the Site shall be subject to such reasonable conditions as may be imposed by PSE from time to time.

3. **Limitations on Use.** Except and only as specifically authorized in paragraph 2, US WEST shall not enter upon the Site or make any use thereof. Without limiting the generality of the foregoing:

3.1 US WEST shall, at all times, undertake the Permitted Activities in a manner so as to prevent bodily harm to persons (whomsoever) and damage to property (whatsoever). Precautionary measures shall include, without limitation, reasonable site security measures (e.g., fencing, signage, lighting, security guards, etc.) necessary to prevent access to the Site during such times as the Permitted Activities may cause the Site to be in an unsafe or unsecured condition.

3.2 US WEST shall, at all times, undertake the Permitted Activities in a manner that does not disturb or interfere in any way with the operations of PSE or any prior existing users of the Site, or otherwise in a manner that would impair the safe, continuous and reliable operation of PSE's utility systems or improvements. Without limiting the generality of the foregoing, US WEST shall at all times:

3.2.1 conduct the Permitted Activities so as to maintain legal and safe clearances from PSE's utility systems or improvements;

3.2.2 take all prudent precautions to ensure that no persons or property come into contact with PSE's utility systems or improvements; and

3.2.3 conduct the Permitted Activities so as to maintain access along and across the Site to PSE's utility systems and improvements, sufficient to allow the free passage of all equipment, vehicles, personnel and other items as may be necessary or convenient for the maintenance, repair and replacement of PSE's utility systems and improvements.

If, at any time, the Permitted Activities shall disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, US WEST shall immediately cease and discontinue such Permitted Activities. If US WEST anticipates that any Permitted Activity may disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, US WEST shall request in writing, not less than fourteen (14) days in advance of the date required, that PSE take such action with respect to its systems or improvements as is necessary to accommodate such Permitted Activity. PSE may elect to accommodate such Permitted Activity in response to such request; provided, however: (a) all costs and expenses incurred by PSE thereby shall be reimbursed to PSE, and (b) PSE may refuse any or all such requests or may discontinue actions undertaken in response to such requests, as PSE, in its sole discretion, may choose. Prior to PSE incurring any cost or expense for which it will seek reimbursement from US WEST, PSE shall submit to US WEST a cost estimate and receive written authorization to proceed with the same.

**3.3** US WEST shall not undertake any activities and shall not use or permit any use of the Site that will in any way:

**3.3.1** be in noncompliance with, or otherwise conflict with, any applicable laws, regulations, ordinances, rules, orders or other requirements, now or hereafter in effect, of any governmental authority (all laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference);

**3.3.2** cause or constitute any nuisance, noxious odors, unsafe condition or waste in or about the Site;

**3.3.3** interfere with the rights or disturb the use and enjoyment of PSE, other users of the Site, or any other person lawfully on the Site;

**3.3.4** cause a cancellation, increase the premiums for or deductibles under or otherwise affect any fire, casualty, property, liability or other insurance covering the Site, any activities conducted upon or from the Site, or any accident, act, error, omission, fault, negligence or strict liability occurring on or about the Site; or

**3.3.5** cause or allow the generation, storage, processing, handling, transport, spill, disposal or release of any dangerous, hazardous or extremely hazardous material, waste or substance at, upon or in any way affecting the Site (including, but not limited to, any such materials, waste or substances subject to regulation by any federal, state or local law pertaining to the protection of human health or the environment).

**3.4** US WEST shall not, and shall not permit others to, install, store, maintain or operate any equipment, fixtures, improvements, supplies, vehicles or other items on the Site except for the Equipment (which Equipment shall be installed, maintained and operated at US WEST's sole cost, risk and expense).

**3.5** US WEST shall obtain and comply (and shall ensure that all of US WEST's Support comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to undertake any Permitted Activity. US WEST shall furnish to PSE such evidence thereof as PSE may request.

**3.6** If, in the reasonable opinion of PSE, the Equipment or any Permitted Activity violates, jeopardizes or unreasonably interferes with: (a) any laws, regulations, rules, orders or other regulatory authorizations, permits or approvals that may concern PSE's present or future use and enjoyment of the Site, or (b) any proprietary rights such as any contract, permit, license, franchise, right-of-way, easement or other rights of PSE, and US WEST fails to correct the problem within thirty (30) days after written notice from PSE (or such shorter or longer period of time as is expressly required or permitted under the applicable law, regulatory authorization, permit or approval or applicable proprietary right of PSE), PSE may require that US WEST immediately remove any or all Equipment from and cease any Permitted Activity at the Site. If US WEST fails to remove any Equipment within fifteen (15) days after PSE makes its request, PSE may remove the Equipment at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

**3.7** US WEST shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Permitted Activities. US WEST shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at US WEST's expense and US WEST shall reimburse PSE for the entire expense thereby incurred. US WEST may contest the validity of any such lien provided that US WEST delivers a bond to PSE in the amount of the contested lien.

**3.8** In undertaking the Permitted Activities, US WEST shall comply and shall ensure that all of its Support comply with all applicable industry standards and codes, and all of PSE's standard practices, specifications, rules and regulations provided by PSE to US WEST on request. US WEST shall furnish such documents as may be reasonably required to effect or evidence such compliance.

**3.9** US WEST shall comply with the following in connection with its performance of the Work:

**3.9.1** US WEST shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. US WEST shall expeditiously and efficiently perform the Work in accordance with the Site Development Plan and the provisions of this Permit. US WEST shall not independently hire any PSE employee to perform any of the Work (e.g., other than in the course of his or her employment with PSE with respect to Work that PSE agrees to perform for US WEST).

**3.9.2** US WEST shall perform the Work in a workmanlike and skillful manner. US WEST shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such reasonable requirements and specifications as PSE shall from time to time prescribe and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to the construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.

**3.9.3** US WEST shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Permit. If US WEST fails or refuses to perform any Work required by this Permit or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

**3.9.4** Installation of the Equipment or the performance of other Work shall not adversely affect the structural integrity, maintenance or marketability of the Site or any structure or improvement on or surrounding the Site.

**3.9.5** US WEST shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. US WEST shall, if so requested by PSE, remove from performance of the Work any personnel (including, without limitation, any Support) whom PSE finds to be incompetent, careless or otherwise unsafe.

**3.9.6** US WEST hereby acknowledges that PSE employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between PSE and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Permit, US WEST will cooperate with PSE and take such action as may be reasonably requested by PSE to fully and expeditiously resolve such dispute.

**3.9.7** US WEST shall, at all times, keep the Site cleared of rubbish, refuse and other debris generated by US WEST or its Support and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, US WEST shall promptly remove all rubbish, refuse and other debris generated by US WEST or its Support and all of its Equipment and surplus materials.

**3.9.8** The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to inspection and testing by PSE. US WEST may, at its option, have a representative present at the Site during any such inspection or testing by PSE. If, in PSE's reasonable judgment, the performance of any Work requires one or more representatives of PSE to be present at the Site during the performance of such Work, then US WEST will reimburse PSE for any and all reasonable costs and expenses thereby incurred by PSE. US WEST shall not be responsible of any cost or expense incurred by PSE or its agents unless US WEST has received a written estimate of the cost and expense in advance and US WEST has authorized the same in writing. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or non-compliance by PSE shall relieve US WEST of any of its obligations under this Permit.

**3.9.9** US WEST shall promptly settle or resolve all complaints received by US WEST from third Parties arising out of or in connection with performance of the Work. US WEST shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, US WEST shall use its best efforts to maintain and promote good public relations for PSE.

**3.9.10** US WEST acknowledges and anticipates that due to electrical service demands or emergency conditions, the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. US WEST shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

**3.9.11** If any part of the Work depends upon the results of other work by PSE or others, US WEST shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that render it unsuitable for performance of the Work. Failure of US WEST to so notify PSE shall constitute an acceptance by US WEST of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

**3.10** Upon completion of Permitted Activities which may disturb the surface or subsurface of the Site (or any improvements thereon), US WEST shall restore the Site (and any improvements thereon) to the condition that existed prior to such disturbance, reasonable wear and tear excepted.



3.11 If, in undertaking Permitted Activities (or activities off-Site in furtherance of Permitted Activities), US WEST shall cause significant public concern with or opposition to its proposed use of the Site, and PSE shall reasonably conclude that such public concern or opposition will materially interfere with its use of the Site or otherwise with the conduct of PSE's business, then PSE may direct US WEST to mitigate to the extent necessary such acts (or omissions) giving rise to such public opposition or concern.

3.12 US WEST shall copy PSE's Director of Planning & Work Practices on all notices and other correspondence received or given by US WEST in connection with any local jurisdiction review process involving any Permitted Activities undertaken or proposed to be undertaken by US WEST at the Site.

#### 4. Equipment, Structures and Facilities.

4.1 US WEST shall maintain all Equipment on the Site in good and safe condition and in a manner that does not materially affect the structural integrity of any structure on the Site. If US WEST fails to do any maintenance within thirty (30) days after receipt of notice from PSE requesting such maintenance, then PSE may, at its option, do such maintenance at US WEST's expense and US WEST shall reimburse PSE for the entire expense thereby incurred. If US WEST commences the requested maintenance within thirty (30) days after any written notice from PSE requesting such maintenance and thereafter continuously and diligently pursues and completes such maintenance, then the thirty (30) day cure period will extend for an additional sixty (60) days to permit US WEST to complete the requested maintenance.

4.2 PSE shall at all times during the Term of this Permit, at PSE's sole cost and expense, maintain any PSE-owned structures used by US WEST for Permitted Activities in a structurally good and safe condition. If US WEST is unable to use such structure due to PSE's maintenance activities, US WEST may immediately install temporary Equipment on any alternate location specified in the Site Development Plan while PSE makes repairs to the Site.

4.3 If PSE at any time relocates, replaces or removes any pole, tower or other facility or structure on which any Equipment is attached, or PSE otherwise determines in its reasonable judgment that any Equipment must be removed or relocated to accommodate PSE's use of or activities on the Site, then US WEST shall, at its sole cost and expense, remove or relocate such Equipment at such times and in the manner directed by PSE. If US WEST fails to remove or relocate its Equipment within one hundred eighty (180) days (or such shorter period of time as PSE may reasonably require under the circumstances) after being directed to do so by PSE, PSE may remove or relocate the Equipment at US WEST's sole risk and expense, and US WEST shall reimburse PSE for the entire expenses thereby incurred.

4.4 In the event US WEST is permitted to and does install any pole, tower or other structure as part of the Equipment on the Site, PSE shall have the right, subject to such reasonable rules and requirements as the parties may agree upon in writing, to install one or more items of equipment on such pole, tower or other structure for PSE's internal purposes only, provided that the pole, tower or structure in question is structurally capable of bearing the weight of PSE's equipment. Such installation and use shall be at PSE's cost and expense, but US WEST shall not levy any charge or fee for PSE's use thereof.

5. **Nonexclusivity.** This Permit is nonexclusive, and PSE may grant rights to others to use the Site for any purpose not inconsistent with US WEST's rights hereunder, including competing telecommunications companies. PSE does not warrant title to the Site and shall not be liable for defects thereto or failure thereof. Without limiting any other provision of this Permit, US WEST will promptly resolve technical interference problems with other radio communications equipment located at the Site on the date of this Permit or any radio communications equipment located at the Site on any future date when US WEST modifies or supplements its Equipment at the Site. PSE shall not permit any subsequent use to the site to install or operate its communication equipment in a manner that will interfere with US WEST's use and enjoyment of the site.

6. **Cooperation of PSE.** PSE shall, at US WEST's expense, support US WEST's efforts to secure any documents or applications required (i.e., by virtue of PSE's ownership of or rights in the Site) to be obtained by US WEST from any governmental agency with jurisdiction in order for US WEST to obtain the necessary licenses, permits or other approvals from such governmental agency for the Permitted Activities; provided, however, that PSE shall not under any circumstances be obligated to execute any application or other document that, in PSE's sole judgment, will in any way impair, limit or adversely affect PSE's rights in or ownership or use of the Site, nor shall PSE be obligated to provide such support if the same requires a commitment of resources of any kind of a value in excess of five hundred dollars (\$500.00).

7. **Emergencies.** In the event of an emergency relating to the Equipment or the Site, US WEST shall immediately correct any safety or use problems, even if full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

PSE: [REDACTED]

US WEST: [REDACTED]

Each Party shall promptly notify the other of any change in such party's emergency phone number.

8. **Ownership and Risk of Loss of Equipment.**

8.1 The Equipment located at the Site pursuant to the terms of this Permit will at all times be and remain the property of US WEST and will not be subject to any lien or encumbrance created or suffered by PSE. US WEST has the right to make such filings with the Washington State Department of Licensing (e.g., UCC-1 Financing Statement) as it deems necessary or desirable to evidence its ownership of the Equipment. Notwithstanding the foregoing, if, upon termination or expiration of the Term, the Equipment is not removed from the Site and the Site restored according to the terms of this Permit, such Equipment shall be deemed abandoned thirty (30) days following such termination or expiration and PSE's waiver of lien shall thereafter be void and of no further force and effect.

8.2 US WEST shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work.

9. **Examination of Records.** US WEST shall promptly furnish PSE with such non-confidential information related to the Work or the Equipment as may from time to time be reasonably requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have reasonable access to and the right to examine all of US WEST's non-confidential books, documents, papers and records which are related to the Work, the Equipment or this Permit.

10. **Compensation.**

10.1 The "Annual Fee" shall mean the annual fee for US WEST's use of the Site as calculated in accordance with the schedule set forth in the attached Appendix 4 and the following:

10.1.1 the Annual Fee will be payable on or before the date of this Permit and thereafter on the first day of the first month following each anniversary of the commencement date of the Master Agreement, and

10.1.2 the Annual Fee will be prorated in the first and last year of this Permit to coincide with the anniversary of the commencement date of the Master Agreement, except that the Annual Fee for the Site will continue past any termination of the Term of this Permit if and until all of the Equipment is removed from the Site and restoration of the Site has occurred according to the provisions of this Permit.

10.2 PSE shall invoice US WEST for all amounts payable by US WEST to PSE under this Permit (including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) as they become due. US WEST shall pay each such invoice in full within thirty (30) days after US WEST's receipt thereof.

10.3 US WEST acknowledges that late payment of any fee or other amounts due to PSE under this Permit will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Permit, the exact amount of which will be extremely difficult, if not impossible, to ascertain.

10.4 US WEST shall pay to PSE interest, compounded daily, at the rate of [REDACTED] per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Permit, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Permit by US WEST.

11. **Taxes.** US WEST shall pay (except as otherwise required by law) all fees and taxes applicable to or incurred in connection with the Work, the Equipment or the system of which the Equipment constitutes a part. Subject to the foregoing, PSE shall pay all taxes and other fees or charges attributable to each Site (including, without limitation, debt and ground lease obligations).

12. **Site Acceptance.**

12.1 US WEST will be deemed to have accepted the Site upon execution of this Site Permit. Conducting feasibility and cost assessments or other preliminary inspections on the Site prior to execution of this Site Permit shall not be deemed to be acceptance.

**12.2** Acceptance of the Site by US WEST in accordance with paragraph 12.1 shall be conclusive evidence that US WEST:

**12.2.1** accepts the Site and any structure on the Site and every part and appurtenance thereof "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS"; and

**12.2.2** releases, and waives all claims against, PSE in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes, except as expressly provided otherwise in this Agreement.

**12.3** PSE does not warrant the suitability of the Site for the purposes for which US WEST may desire to use it (including, without limitation, the Permitted Activities); nor does PSE warrant the adequacy of the Site's location, its condition nor the condition of any structure or appurtenances for any purpose. US WEST acknowledges that, in accepting the Site (and any and all structures thereon used by US WEST for Permitted Activities) in its "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS" condition, PSE makes no representations or warranties whatsoever concerning the Site and/or such structures, or any aspect of their status or condition, and that US WEST is not in any way relying on information disclosed by PSE with respect thereto, or otherwise in PSE's possession with respect thereto; rather, US WEST is solely relying on its own inspections and assessments with respect to the condition or status of the Site and/or such structures.

### **13. Term and Termination.**

**13.1** The term of this Permit (the "Term") will commence on the date of this Permit and, unless earlier terminated as provided elsewhere in this Permit, will end on \_\_\_\_\_.

**13.2** The Term will terminate automatically upon the first of the following to occur:

**13.2.1** the term of the Master Agreement at any time expires or is terminated for any reason;

**13.2.2** any certificate, permit, license or approval affecting US WEST's ability to use the Site in the manner originally intended by US WEST is finally rejected; or

**13.2.3** any previously issued certificate, permit, license or approval affecting US WEST's ability to use the Site is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency.

**13.3** PSE may at any time terminate the Term and all of US WEST's rights to use the Site upon:

**13.3.1** one hundred twenty (120) days' prior written notice to US WEST if any Permitted Activity unreasonably interferes with (a) PSE's or any other prior existing user's use of the Site, or (b) access to or around the Site or any structure adjacent to the Site by PSE or any other prior existing users of PSE's property on or adjacent to the Site, however PSE agrees not to terminate in accordance with this paragraph 13.3.1 within 5 (five) years of the date of this site permit, or

13.3.2 the occurrence of any Event of Default.

13.4 US WEST may terminate the Term upon one hundred twenty (120) days' prior written notice to PSE if US WEST is unable (e.g., for technological reasons) to use the Site for the Permitted Activities, however US WEST agrees not to terminate in accordance with this paragraph 13.4 within 5 (five) years of the date of this site permit.

**14. Default.**

14.1 The occurrence of any one or more of the following events constitutes an "Event of Default" by US WEST under this Permit:

14.1.1 US WEST undertakes any activities on the Site other than the Permitted Activities;

14.1.2 US WEST fails to pay when due the full amount of any fee or other payment under this Permit, where such failure continues for fifteen (15) days after written notice thereof by PSE to US WEST;

14.1.3 US WEST fails to cure any other default under or breach of any provision of this Permit (i.e., other than a default or breach covered by paragraph 11.1.1) within thirty (30) days after PSE gives US WEST written notice of such default or breach; except such thirty (30) day cure period will be extended as reasonably necessary to permit US WEST to complete cure so long as US WEST commences cure within the thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure;

14.1.4 two (2) or more defaults by US WEST in the payment of any fee or other payments under the Permit which would allow PSE to issue a notice of default in any twelve (12) month period, which such occurrence will constitute a noncurable material default and breach of this Permit;

14.1.5 US WEST deserts, abandons, or vacates any portion of a Site and fails to maintain any and all Equipment remaining at the Site.

14.2 If an Event of Default occurs, PSE (without notice or demand except as expressly required above) may, in addition to any other right or remedy to which PSE may be entitled under this Permit or applicable law, recover from US WEST an amount equal to the sum of the following:

14.2.1 the actual costs of removing the Equipment and restoring the Site to its original condition;

14.2.2 the Annual Fees for the Site until such time as the Site is restored to its original condition, plus interest thereon from the date due until paid according to the terms of this Permit; and

14.2.3 all other sums of money and damages to which PSE may be entitled hereunder or under applicable law.

15. **Effect of Termination.** Within thirty (30) days after termination of the Term, US WEST shall remove all Equipment from the Site and restore the Site to its original condition except for reasonable use, wear and tear. US WEST will repair any damage to the Site caused during the removal of the Equipment. Following expiration of the above thirty (30) day period, PSE shall furnish to US WEST a list of any removal, restoration, repair or other work that remains to be completed at the Site. US WEST will thereafter complete the work specified on the list within ten (10) days after receipt of the list from PSE. If US WEST shall fail to complete the specified work within the ten (10) day period, PSE may complete the work, or have the work completed through the most expeditious means available, at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

16. **Release, Indemnity, Hold Harmless and Limitation of Liability.**

16.1 US WEST releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with the conduct of the Permitted Activities (including, without limitation, the location of any Equipment at the Site, the performance of the Work, or the operation of the Equipment or the system of which the Equipment is a part), the enforcement of this Permit by PSE, any default under or breach of this Permit by US WEST or the acts or omissions of US WEST or any of its Support, its directors, officers, employees and agents or anyone acting on US WEST's behalf in connection with this Permit. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that US WEST shall not be required to so indemnify any Indemnitee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence or willful misconduct of any Indemnitee(s). In connection with any action to enforce this paragraph 16.1, US WEST waives any immunity, defense, or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit the Equipment on the Site for the fees described in this Permit only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity and hold harmless shall be construed broadly in favor of the Indemnitees.

16.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, PSE SHALL NOT HAVE ANY LIABILITY TO US WEST FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF US WEST FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

16.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, US WEST SHALL NOT HAVE ANY LIABILITY TO PSE FOR ANY LOSS OF PROFIT OR REVENUE, CLAIMS OF CUSTOMERS OF PSE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION,

NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF US WEST HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

**17. Worker's Compensation, Insurance and Bonds.**

17.1 US WEST shall ensure that US WEST and all persons undertaking any Permitted Activities, including without limitation US WEST's Support, maintain in effect at all times, coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. US WEST shall furnish to PSE such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as PSE may request.

17.2 US WEST shall secure and maintain in effect at all times during the Term the following insurance:

17.2.1 fire insurance, with endorsements for extended coverage vandalism, and malicious mischief, on the Site, in an amount not less than [REDACTED] of the full replacement cost of the Site (including, without limitation, all equipment and facilities located thereon); and

17.2.2 Commercial General Liability Coverage, including personal injury, bodily injury, property damage, operations hazard, independent contractor coverage, contractual liability, products and completed operations liability and stop gap coverage, in limits not less than five million dollars (\$5,000,000) for each occurrence (combined single limit) with US WEST named as insured therein and PSE named as an additional insured therein as their respective interests may appear.

17.3 All required insurance policies must be taken out with reputable national insurers that are licensed to do business in the jurisdiction where the Site is located. US WEST will deliver to PSE a Certificate of Insurance in the form attached to this Permit as Appendix 5 prior to commencement of performance of any of the Work. All policies must contain an undertaking by the insurers to notify PSE in writing not less than fifteen (15) days before any material change, reduction in coverage, cancellation or termination of the insurance. US WEST and PSE will each year review the limits for the insurance policies required by this Permit. Policy limits will be adjusted to proper and reasonable limits as circumstances warrant, but policy limits will not be reduced below those stated in paragraph 17.2 and no increases in the policy limits will be effective unless US WEST and PSE mutually agree.

17.4 US WEST shall also furnish PSE with such additional assurance and evidence of such insurance (such as copies of all insurance policies) as PSE may from time to time reasonably request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Permit, US WEST shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.

17.5 US WEST shall ensure that any policies of insurance that US WEST or any of its Support carry as insurance against property damage or against liability for personal injury (including death)

or property damage shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies, US WEST hereby waive all rights of subrogation against the Indemnities.

**17.6** All insurance carried by US WEST or any of its Support shall be primary insurance with respect to the interests of PSE, and any insurance or self-insurance maintained by PSE is in excess and not contributory insurance with the insurance required hereunder.

**17.7** The requirements of this Permit as to insurance and acceptability to PSE of insurers and insurance to be maintained by US WEST are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by US WEST under this Permit.

US WEST (but not its successors or assigns unless specifically agreed by PSE in writing at the time of assignment) may satisfy all or a portion of its obligations under this Section 17 through a self-insurance program acceptable to PSE. US WEST shall provide a certificate and/or self-insurance letter, in each case duly executed by an authorized officer of US WEST, which (a) describes program coverages and limits and (b) commits US WEST's self-insurance program to cover any and all obligations in this Agreement.

**18. Assignment, Successors and Assigns.**

**18.1** US WEST shall not assign this Permit or any portion of its rights in this Permit, except as follows:

**18.1.1** to any person or entity that controls, is controlled by or under common control with US WEST (the "Acquiring Affiliate"); provided that US WEST gives PSE written notice of any such assignment or transfer and pays all amounts then outstanding and owing to PSE under this Permit; provided further that the Acquiring Affiliate certifies to PSE in writing (and provides such documents as may be requested by PSE to establish to PSE's reasonable satisfaction) that the Acquiring Affiliate (i) will assume all of the obligations of US WEST under this Permit, and (ii) is financially able to and will comply with all of the provisions of this Permit; and provided further that US WEST furnishes to PSE such information regarding the Equipment affected by such assignment or transfer as may reasonably be requested by PSE;

**18.1.2** to US WEST's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by US WEST, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of US WEST under this Permit; or

**18.1.3** to any other person or entity with the prior written consent of PSE.

**18.2** Except as specifically provided in paragraph 18.1, any assignment or apportionment, or purported assignment or apportionment of this Permit, whether it be express, by operation of law or otherwise, shall be voidable by PSE. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.



**19. Casualty or Condemnation of the Site**

**19.1** If there is a casualty to any structure upon which the Equipment is located, PSE will use reasonable efforts to repair or restore the structure within sixty (60) days. Upon completion of such repair or restoration, US WEST will be entitled to reinstall the Equipment. In the event such repairs or restoration will, in PSE's reasonable estimation, require more than sixty (60) days to complete or if US WEST determines that the cost to reinstall its equipment is not feasible:

**19.1.1** US WEST or PSE will be entitled to terminate this Site Permit; or

**19.1.2** unless this Site Permit is terminated as provided in paragraph 19.1.1, US WEST may immediately install temporary Equipment, including any necessary supporting structure,

(a) at the Site, or

(b) at another unused portion of PSE's property adjacent to the Site, to the extent US WEST has the rights to do so,

while PSE makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with PSE's own restoration and operation of its facilities.

**19.2** If there is a condemnation of the Site, including without limitation a transfer of the Site by consensual deed in lieu of condemnation, then the Term will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Permit. US WEST may pursue a separate condemnation award for the Equipment and any relocation or other costs from the condemning authority provided that such award does not reduce the amount of PSE's award.

**20. Subordination.**

**20.1** US WEST agrees that this Permit is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against PSE's interest or estate therein, and any underlying ground lease or master lease on a particular Site, all without the necessity of having further instruments executed by US WEST to effect such subordination.

**20.2** This Permit is further subject to any and all restrictions or other terms or conditions contained in the underlying ground lease, master lease, easement, license, franchise, permit or other instrument of authorization or conveyance (an "Instrument") with respect to the Site. US WEST agrees to commit no act or omission which would constitute a violation of the terms and conditions of any Instrument for the Site insofar as PSE has provided a copy of such Instrument to US WEST or otherwise notified US WEST of the term or condition in question.

**20.3** PSE shall not be required to obtain any consent required under any Instrument from the landlord or other party to such Instrument for purposes of this Permit, unless hereafter agreed upon by PSE in writing.

20.4 If a restriction contained in an Instrument for the Site prevents US WEST from installing, maintaining or operating the Equipment or accessing the Site, US WEST will be entitled to terminate the Term.

20.5 Upon the termination or expiration of any Instrument with respect to the Site, the Term shall automatically terminate without liability to either Party. US WEST acknowledges that many of PSE's underlying Instruments grant to the property owner the right to terminate such Instruments, and that in the event of such termination, the Term shall terminate concurrently therewith without liability to either Party.

20.6 Upon any sale or other transfer of all or any portion of the Site, the Term will automatically terminate except to the extent the purchaser or transferee and US WEST enter into an agreement for US WEST's continued use of the Site and release PSE from any further obligation or liability with respect to the Site. PSE shall request or attempt to obtain such agreement from the purchaser or transferee at the time of sale or transfer.

20.7 PSE will not materially breach the terms or conditions of any Instrument with respect to a particular Site in a manner that causes US WEST to lose its use of the Site.

21. **Notices.** Any notice, request, approval, consent, instruction, direction or other communication given by either PSE or US WEST to the other under this Permit shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to:

If to PSE:  
Puget Sound Energy, Inc.  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734  
Attn: Real Estate Department

If to US WEST:  
U S WEST Communications, Inc.  
c/o U S WEST Business Resources, Inc.  
188 Inverness Drive West, Suite 420  
Englewood, Colorado 80112  
Attn: PSL Manager/PCS Real Estate

with a copy to:  
U S WEST Communications Wireless Group  
405 110th Avenue NE, #209  
Bellevue, WA 98004  
Attn: Regional Real Estate Manager

Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this paragraph 21.

22. **No Partnership.** This Permit shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or

undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

23. **Attorneys' Fees.** The prevailing Party in any suit, action, or arbitration filed or held concerning this Permit shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

24. **Severability.** The invalidity or unenforceability of any provision of this Permit shall not affect the other provisions hereof, and this Permit shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. **Survival.** All provisions of this Permit which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of the Term or this Permit, shall survive the completion, termination or cancellation of the Term or this Permit.

26. **Headings.** The headings of sections and paragraphs of this Permit are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

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

28. **Force Majeure.** If a Party is delayed or hindered in, or prevented from performance required under this Permit (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of the such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

29. **Memorandum of Use.** Neither Party shall record this Permit or otherwise cause this Permit to be recorded. However, upon the request of either Party, the Parties shall execute, acknowledge, deliver and record a memorandum of use in form and content substantially the same as the attached Appendix 6. Upon termination of the Term for any reason, the Parties shall execute, acknowledge, deliver and record a termination document in form and content acceptable to PSE.

30. **Entire Agreement.** The rights and obligations of the Parties hereunder shall be subject to and governed by this Permit. This Permit sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the Equipment, the Work, the Site and other subject matter of this Permit. This Permit may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.

31. **Applicable Law.** This Permit shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington.

**LIST OF APPENDICES  
TO  
GENERAL CONDITIONS OF SITE PERMIT**

<u>Appendix</u>	<u>Title</u>
1	Site
2	Equipment
3	Site Development Plan
4	Annual Fees
5	Certificate of Insurance
6	Memorandum of Use

**APPENDIX 1**

**Site**

**APPENDIX 2**

**Equipment**

**APPENDIX 3**

**Site Development Plan**

## APPENDIX 4

### Annual Fees

#### I. DEFINITIONS

- A. "Raw Land Sites" are those sites owned in fee or leased by PSE that either require installation of new structures to support antenna and associated masthead electronics, or where such structures already exist. These sites may be portions of larger sites. They may also be located on partial rights held by PSE that are broad enough to accommodate US WEST facilities (typically this does not include easements). Such sites do not include structures or improvements owned or leased by PSE. Such sites are intended to make available an area no greater than 1,000 square feet for the typical installation of a tower, antennae, coaxial cable, equipment cabinet and equipment pad and/or other related incidental improvements authorized under terms of the Site Permit.
- B. "Attachment Facilities" are those sites that include the utilization of an existing PSE tower, pole, structure or other improvement suitable for attachment of antenna and associated masthead electronics.

#### Notes:

- Annual rental on any "site" may include charges from either or both Section 11 (Raw Land) and Section III (Attachment), below.
- It is understood that US WEST will secure such additional rights as needed for its facilities.
- Cost of utilities to service the permitted use to be borne by US WEST.
- Cost of new tower/structure for US WEST facilities to be borne by US WEST.
- The rental rates described below do not apply to sites connecting eastern and western Washington (i.e., through Snoqualmie or Steven's Pass).

#### II. ANNUAL RENTAL RATES FOR RAW LAND SITES (LAND ONLY)

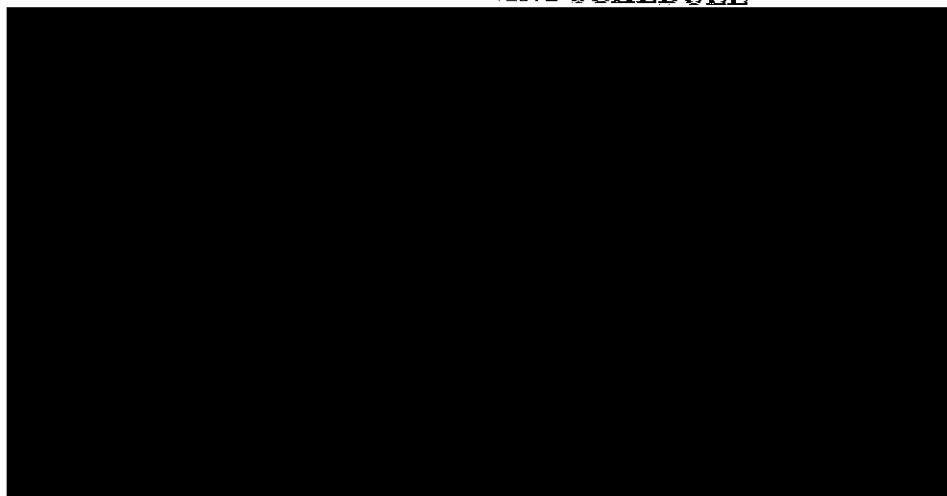
Rents will correlate with the population of the local community where the facility is situated or that it serves, or both. The population base for the site is determined in three ways. The first step is to determine whether the facility is situated in or near a community listed as a Ranally Metro Area (RMA) as identified in the most current "Rand McNally Commercial Atlas and Marketing Guide." If the community is listed as an RMA or within an RMA, the population of the RMA (i.e., SEAT-) community as shown in the Rand McNally publication will be used to set the scheduled rent.

Second, if the site is not located within or serving a listed RMA, the scheduled rent will be based on the most recent Rand McNally Road Atlas population of the largest nearby community. (The population of many principal cities and towns that are not part of an RMA are also shown and may be used for purposes herein.)



Third, for sites located in or serving a community of less than 25,000 people, the rent that will be charged is the minimum rent, [REDACTED]

### ANNUAL RENT SCHEDULE



#### Escalation:

1. Annual rents for Raw Land Sites shall increase at the rate of [REDACTED] at five-year intervals, on the anniversary of the commencement date of the Master Agreement.
2. PSE reserves the right to adjust the above Annual Rent Schedule to market value at the ten-year anniversary (or any year thereafter) of the commencement date of the Master Agreement. If PSE elects to implement an adjustment under this paragraph 2, such adjustment will be in lieu of the increase that would otherwise take effect under paragraph 1, above, (i.e. on the tenth anniversary of the commencement of the Master Agreement).

### III. ANNUAL RENTAL RATES FOR ATTACHMENT FACILITIES

- A. Attachments to transmission tower (lattice) ..... [REDACTED]
- B. Attachments to transmission mono-poles (wood or metal)..... [REDACTED]
- C. Annual rental rates for attachments to communications towers owned/leased by PSE shall be determined on a *case by case* basis.
- D. Annual rates for attachments to buildings owned/leased by PSE shall be determined on a *case by case* basis.

Rents for attachments to PSE structures and improvements shall increase at the rate of [REDACTED] at five-year intervals, on the anniversary of the commencement date of the Master Agreement.

APPENDIX 5

Certificate of Insurance

APPENDIX 6

Memorandum of Use

KNAPP & ROME, L.L.C.

ATTORNEYS AT LAW  
1775 SHERMAN STREET, SUITE 1780  
DENVER, COLORADO 80203

GERALD R. ROME

TELEFACSIMILE [REDACTED]  
E-MAIL: KNAPPROME@DVNEXUS.NET

October 22, 1997

Via Facsimile [REDACTED]

Ralph Long  
U S WEST Communications Wireless Group  
1249 N.E. 145<sup>th</sup> Street  
Room 105  
Seattle, Washington 98155

Re: Puget Sound Power & Light Company Master Site Agreement with U S WEST Wireless Group

Dear Ralph:

I spoke to Alyson Buchanan regarding the above referenced Master Agreement. As you know, the Master Agreement contains language concerning insurance coverage which provides for a waiver of U S WEST's subrogation rights for liability for personal injury on the one hand and then holds Puget Sound Power harmless except for their negligence or willful misconduct on the other hand. These two provisions are in conflict and may prevent U S WEST from seeking reimbursement from Puget Sound Power for their contributory negligence for personal injuries that may occur. In addition, the Master Agreement provides that U S WEST will furnish Puget Sound Power with copies of its insurance policies.

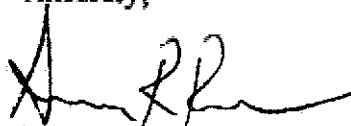
Alyson has had an opportunity to review the questionable insurance language. Given the extenuating circumstances that exist with respect to this Master Agreement, Alyson has agreed to accept the insurance language as it now exists in the executed Agreement. Please be advised that it is still the policy of U S WEST not to waive its subrogation rights for liability nor agree to furnish copies of its insurance policies. U S WEST will not agree to such language in any future proposed agreements. The exception is being made here because of the fact that the Master Agreement has already been executed by the parties and the difficulty you have had in attempting to renegotiate these terms when they have already been agreed to by the parties.

I have also discussed with Shirley Sattler whether U S WEST can wire transfer the rental payments as now required by the Master Agreement. Shirley has advised that wire transfers are

difficult to do and costly. She has a strong preference not to agree to wire transfers. I would request that you inquire of Puget Sound Power whether it is possible to do make lease payments by a means other than wire transfers.

Please call with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Rome', written over a horizontal line.

Gerald R. Rome

GRR/plm  
cc: Alyson Buchanan  
Charlene Polk  
Shirley Sattler



**PERMIT FOR LOCATION OF FACILITIES**  
South Mercer Substation

This Permit, dated as of September 22, 1997, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and Western Wireless Corporation, a Washington corporation, and its subsidiaries and affiliates, collectively ("Western"). PSE and Western are at times referred to herein where appropriate individually as a "Party" and collectively as the "Parties".

1. **Permit.** For and in consideration of the mutual benefits to be derived therefrom, PSE hereby grants permission to Western, subject to the terms and conditions of this Permit, to use the real property described in the attached Appendix 1 (the "Site"). The rights and obligations of Western arising under this Permit will apply to and be binding upon Western's officers, employees, agents and representatives, and its suppliers and subcontractors of any tier acting on behalf of Western in connection with the performance of the Work (as defined below) or this Permit (collectively, the "Support"). Western shall be solely responsible for the performance, nonperformance, acts and omissions of its Support.

2. **Use of the Site.** Western shall have the right to use the Site for the purpose of undertaking the following activities (the "Permitted Activities"):

2.1 installation, operation and maintenance of the equipment specified in the attached Appendix 2 (the "Equipment") in accordance with the site development plan attached hereto as Appendix 3 (the "Site Development Plan") and all other provisions of this Permit; and

2.2 performance of the installation, maintenance, repair, relocation, removal and other work specified in the Site Development Plan (collectively, the "Work") in accordance with the Site Development Plan and all other provisions of this Permit; and

2.3 obtaining, at Western's sole cost and expense, telephone service from any utility company that provides such service to the Site, and arranging for the installation of a separate meter and main breaker, subject to PSE's right to reasonably approve the exact location of proposed utility routes and the manner of installation; and

2.4 access to and from the Site for purposes of undertaking the activities specified in paragraphs 2.1, 2.2 and 2.3, in accordance with the following:

2.4.1 access for construction, routine maintenance and repair and other non-emergency visits shall only be during normal business hours (defined as Monday through Friday, 8 am to 6 pm) unless otherwise agreed upon by the Parties;

2.4.2 in the event of emergency, Western may access the Site twenty-four (24) hours per day, seven days per week, by calling the PSE emergency telephone number set forth in paragraph 7 and requesting such access;

2.4.3 access to the Site may be by foot or motor vehicle, including trucks;  
and

2.4.4 access to the Site shall be subject to such reasonable conditions as may be imposed by PSE from time to time.

3. **Limitations on Use.** Except and only as specifically authorized in paragraph 2, Western shall not enter upon the Site or make any use thereof. Without limiting the generality of the foregoing:

3.1 Western shall, at all times, undertake the Permitted Activities in a manner so as to prevent bodily harm to persons (whomsoever) and damage to property (whatsoever). Precautionary measures shall include, without limitation, reasonable site security measures (e.g., fencing, signage, lighting, security guards, etc.) necessary to prevent access to the Site during such times as the Permitted Activities may cause the Site to be in an unsafe or unsecured condition.

3.2 Western shall, at all times, undertake the Permitted Activities in a manner that does not disturb or interfere in any way with the operations of PSE or any prior existing users of the Site, or otherwise in a manner that would impair the safe, continuous and reliable operation of PSE's utility systems or improvements. Without limiting the generality of the foregoing, Western shall at all times:

3.2.1 conduct the Permitted Activities so as to maintain legal and safe clearances from PSE's utility systems or improvements;

3.2.2 take all prudent precautions to ensure that no persons or property come into contact with PSE's utility systems or improvements; and

3.2.3 conduct the Permitted Activities so as to maintain access along and across the Site to PSE's utility systems and improvements, sufficient to allow the free passage of all equipment, vehicles, personnel and other items as may be necessary or convenient for the maintenance, repair and replacement of PSE's utility systems and improvements.

If, at any time, the Permitted Activities shall disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, Western shall immediately cease and discontinue such Permitted Activities. If Western anticipates that any Permitted Activity may disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, Western shall request in writing, not less than fourteen (14) days in advance of the date required, that PSE take such action with respect to its systems or improvements as is necessary to accommodate such Permitted Activity. PSE may elect to accommodate such Permitted Activity in response to such request; provided, however: (a) all costs and expenses incurred by PSE thereby shall be reimbursed to PSE, and (b) PSE may

refuse any or all such requests or may discontinue actions undertaken in response to such requests, as PSE, in its sole discretion, may choose.

**3.3** Western shall not undertake any activities and shall not use or permit any use of the Site that will in any way:

**3.3.1** be in noncompliance with, or otherwise conflict with, any applicable laws, regulations, ordinances, rules, orders or other requirements, now or hereafter in effect, of any governmental authority (all laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference);

**3.3.2** cause or constitute any nuisance, noxious odors, unsafe condition or waste in or about the Site;

**3.3.3** interfere with the rights or disturb the use and enjoyment of PSE, other users of the Site, or any other person lawfully on the Site;

**3.3.4** cause a cancellation, increase the premiums for or deductibles under or otherwise affect any fire, casualty, property, liability or other insurance covering the Site, any activities conducted upon or from the Site, or any accident, act, error, omission, fault, negligence or strict liability occurring on or about the Site; or

**3.3.5** except as otherwise provided in the Site Development Plan, cause or allow the generation, storage, processing, handling, transport, spill, disposal or release of any dangerous, hazardous or extremely hazardous material, waste or substance at, upon or in any way affecting the Site (including, but not limited to, any such materials, waste or substances subject to regulation by any federal, state or local law pertaining to the protection of human health or the environment).

**3.4** Except in connection with installation of the Equipment in accordance with the Site Development Plan, and maintenance of the Equipment, Western shall not, and shall not permit others to, install, store, maintain or operate any equipment, fixtures, improvements, supplies, vehicles or other items on the Site except for the Equipment (which Equipment shall be installed, maintained and operated at Western's sole cost, risk and expense).

**3.5** Western shall obtain and comply (and shall ensure that all of Western's Support comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to undertake any Permitted Activity. Western shall furnish to PSE such evidence thereof as PSE may request.

**3.6** If, in PSE's reasonable judgment, the Equipment or any Permitted Activity violates, jeopardizes or unreasonably interferes with: (a) any laws, regulations, rules, orders or other regulatory authorizations, permits or approvals that may concern PSE's present or future use and enjoyment of the Site, or (b) any proprietary rights such as any contract, permit, license, franchise, right-of-way, easement or other rights of PSE, and Western fails to correct the problem within thirty (30) days after written notice from PSE (or such shorter or (to the extent reasonably necessary to correct the problem) longer period of time as is expressly required or permitted under the applicable law, regulatory authorization, permit or approval or applicable proprietary



right of PSE), PSE may require that Western immediately remove any or all Equipment from and cease any Permitted Activity at the Site. If Western fails to remove any Equipment within fifteen (15) days after PSE makes its request, PSE may remove the Equipment at Western's sole risk and expense and Western shall reimburse PSE for the entire expense thereby incurred.

**3.7** Western shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Permitted Activities. Western shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at Western's expense and Western shall reimburse PSE for the entire expense thereby incurred. Western may contest the validity of any such lien provided that Western delivers a bond to PSE in the amount of the contested lien.

**3.8** In undertaking the Permitted Activities, Western shall comply and shall ensure that all of its Support comply with all applicable industry standards and codes, and all of PSE's standard practices, specifications, rules and regulations provided by PSE to Western on request. Western shall furnish such documents as may be required to effect or evidence such compliance.

**3.9** Western shall comply with the following in connection with its performance of the Work:

**3.9.1** Western shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. Western shall expeditiously and efficiently perform the Work in accordance with the Site Development Plan and the provisions of this Permit. Western shall not independently hire any PSE employee to perform any of the Work (e.g., other than in the course of his or her employment with PSE with respect to Work that PSE agrees to perform for Western).

**3.9.2** Western shall perform the Work in a workmanlike and skillful manner. Western shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first-class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such reasonable requirements and specifications as PSE shall from time to time prescribe and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to the construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.

**3.9.3** Western shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Permit. If Western fails or refuses to perform any Work required by this Permit or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at Western's sole risk and expense and Western shall reimburse PSE for the entire expense thereby incurred.

**3.9.4** Installation of the Equipment or the performance of other Work shall not adversely affect the structural integrity, maintenance or marketability of the Site or any structure or improvement on or surrounding the Site.

**3.9.5** Western shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. Western shall, if so requested by PSE, remove from performance of the Work any personnel (including, without limitation, any Support) whom PSE finds to be incompetent, careless or otherwise unsafe.

**3.9.6** Western hereby acknowledges that PSE employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between PSE and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Permit, Western will cooperate with PSE and take such action as may be reasonably requested by PSE to fully and expeditiously resolve such dispute.

**3.9.7** Western shall, at all times, keep the Site cleared of rubbish, refuse and other debris generated by Western or its Support and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, Western shall promptly remove all rubbish, refuse and other debris generated by Western or its Support and all of its Equipment and surplus materials.

**3.9.8** The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to inspection and testing by PSE. Western may, at its option, have a representative present at the Site during any such inspection or testing by PSE. If, in PSE's reasonable judgment, the performance of any Work requires one or more representatives of PSE to be present at the Site during the performance of such Work, then Western will reimburse PSE for any and all reasonable costs and expenses thereby incurred by PSE. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or non-compliance by PSE shall relieve Western of any of its obligations under this Permit.

**3.9.9** Western shall promptly settle or resolve all complaints received by Western from third Parties arising out of or in connection with performance of the Work. Western shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, Western shall use its best efforts to maintain and promote good public relations for PSE.

**3.9.10** Western acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. Western shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

**3.9.11** If any part of the Work depends upon the results of other work by PSE or others, Western shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that render it unsuitable for performance of the Work. Failure of Western to so notify PSE shall constitute an

acceptance by Western of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

**3.10** Upon completion of Permitted Activities which may disturb the surface or subsurface of the Site (or any improvements thereon), Western shall restore the Site (and any improvements thereon) to a condition as good or better than the condition the Site (or such improvements) was in prior to such disturbance.

**3.11** If, in undertaking Permitted Activities (or activities off-Site in furtherance of Permitted Activities), Western shall cause significant atypical public concern with or opposition to its proposed use of the Site, and PSE shall reasonably conclude that such public concern or opposition will materially interfere with its use of the Site or otherwise with the conduct of PSE's business and cannot be mitigated within a reasonable period of time, then PSE may direct Western to cease and desist such acts (or omissions) giving rise to such public opposition or concern.

**3.12** Western shall copy PSE's T&D Planning & Analysis Department Director on all notices and other correspondence received or given by Western in connection with any local jurisdiction review process involving any Permitted Activities undertaken or proposed to be undertaken by Western at the Site.

#### **4. Equipment, Structures and Facilities.**

**4.1** Western shall maintain all Equipment on the Site in good and safe condition and in a manner that does not materially affect the structural integrity of any structure on the Site. If Western fails to do any necessary maintenance within thirty (30) days after receipt of notice from PSE requesting such maintenance, then PSE may, at its option, do such maintenance at Western's expense and Western shall reimburse PSE for the entire expense thereby incurred. If Western commences the requested maintenance within thirty (30) days after any written notice from PSE requesting such maintenance and thereafter continuously and diligently pursues and completes such maintenance, then the thirty (30)-day cure period will extend for an additional sixty (60) days to permit Western to complete the requested maintenance.

**4.2** PSE shall at all times during the Term of this Permit, at PSE's sole cost and expense, maintain any PSE-owned structures used by Western for Permitted Activities in a structurally good and safe condition. If Western is unable to use such structure due to PSE's maintenance activities, Western may immediately install temporary Equipment on any alternate location specified in the Site Development Plan while PSE makes repairs to the Site.

**4.3** If PSE at any time relocates, replaces or removes any pole, tower or other facility or structure on which any Equipment is attached due to notice to PSE by a third party out of PSE's control, then Western shall remove or relocate such Equipment at such times and in the manner directed by PSE. If PSE otherwise determines in its reasonable judgment that any Equipment must be removed or relocated to accommodate PSE's use of or activities on the Site, then Western shall remove or relocate such Equipment at such times and in the manner directed by PSE. If the removal or relocation is required within 5 years of the issuance of the applicable Site Permit, then PSE shall pay the reasonable costs associated with said relocation or removal. If the removal or relocation is required 5 years or later, then Western shall pay all such costs. If Western fails to remove or relocate its Equipment within one hundred eighty (180) days (or such shorter period of time as PSE may reasonably require under the circumstances) after being

directed to do so by PSE, PSE may remove or relocate the Equipment at Western's sole risk and expense, and Western shall reimburse PSE for the entire expenses thereby incurred. In any event, in the case of such required relocation or removal, PSE shall make best efforts to make a suitable substitute PSE location available to Western. )

4.4 In the event Western is permitted to and does install any pole, tower or other structure as part of the Equipment on the Site, PSE shall have the right, subject to such reasonable rules and requirements as the parties may agree upon in writing, to install one or more items of equipment on such pole, tower or other structure for PSE's internal purposes only, provided that the pole, tower or structure in question is structurally capable of bearing the weight of PSE's equipment and providing such installation and use does not interfere with the operation of Western's own Equipment. Such installation and use shall be at PSE's cost and expense, but Western shall not levy any charge or fee for PSE's use thereof.

5. Nonexclusivity. This Permit is nonexclusive, and PSE may grant rights to others to use the Site for any purpose not inconsistent with Western's rights hereunder. PSE does not warrant title to the Site and shall not be liable for defects thereto or failure thereof. Without limiting any other provision of this Permit, Western will promptly resolve technical interference problems with other radio communications equipment located at the Site on the date of this Permit or any radio communications equipment located at the Site on any future date when Western modifies or supplements its Equipment at the Site. Likewise, PSE will not permit the installation of any future radio communications equipment which results in technical interference problems with Western's then-existing Equipment at the Site; provided that the foregoing obligation of PSE shall only apply if and to the extent PSE is expressly entitled by contract or applicable law to prevent or refuse to permit such installation.)

6. Cooperation of PSE. PSE shall, at Western's expense, support Western's efforts to secure any documents or applications required (i.e., by virtue of PSE's ownership of or rights in the Site) to be obtained by Western from any governmental agency with jurisdiction in order for Western to obtain the necessary licenses, permits or other approvals from such governmental agency for the Permitted Activities, and shall otherwise reasonably cooperate with Western in the construction and operation of the Site; provided, however, that PSE shall not under any circumstances be obligated to execute any application or other document that, in PSE's sole judgment, will in any way impair, limit or adversely affect PSE's rights in or ownership or use of the Site, nor shall PSE be obligated to provide such support if the same requires a commitment of resources of any kind of a value in excess of five hundred dollars (\$500.00) unless Western agrees to reimburse PSE for any expenditures in excess of said five hundred dollars.)

7. Emergencies. In the event of an emergency relating to the Equipment or the Site, Western shall immediately correct any safety or use problems, even if full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

PSE: [REDACTED]  
Western: [REDACTED]

Each Party shall promptly notify the other of any change in such party's emergency phone number.

**8. Ownership and Risk of Loss of Equipment.**

8.1 The Equipment located at the Site pursuant to the terms of this Permit will at all times be and remain the property of Western and will not be subject to any lien or encumbrance created or suffered by PSE. Western has the right to make such filings with the Washington State Department of Licensing (e.g., UCC-1 Financing Statement) as it deems necessary or desirable to evidence its ownership of the Equipment. Notwithstanding the foregoing, if, upon termination or expiration of the Term, the Equipment is not removed from the Site and the Site restored according to the terms of this Permit, such Equipment shall be deemed abandoned sixty (60) days following such termination or expiration and PSE's waiver of lien shall thereafter be void and of no further force and effect.

8.2 Western shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work, except to the extent caused by the negligence of PSE or any of its agents or contractors.]

9. **Examination of Records.** Western shall promptly furnish PSE with such information related to the Work or the Equipment as may from time to time be reasonably requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have access to and the right to examine and copy all of Western's books, documents, papers and records which are related to the Work, the Equipment or this Permit.

**10. Compensation.**

10.1 The "Annual Fee" shall mean the annual fee for Western's use of the Site as calculated in accordance with the schedule set forth in the attached Appendix 4 and the following:

10.1.1 the Annual Fee will be payable on or before the date of this Permit or upon Western's receipt of all necessary governmental approvals affecting Western's ability to use the site in the manner intended, whichever event last occurs, and thereafter on the first day of the first month following each anniversary of the commencement date of the Master Agreement, and

[ 10.1.1.1 Western shall give written notice to PSE within 5 days of receipt of governmental approvals referred to in paragraph 10.1.1 above ]

10.1.2 the Annual Fee will be prorated in the first and last year of this Permit to coincide with the anniversary of the commencement date of the Master Agreement, except that the Annual Fee for the Site will continue past any termination of the Term of this Permit if and until all of the Equipment is removed from the Site and restoration of the Site has occurred according to the provisions of this Permit.

10.2 PSE shall invoice Western for all amounts payable by Western to PSE under this Permit (including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) as they become due. Western shall pay each such invoice in full within thirty (30) days after Western's receipt thereof.

10.3 Western shall pay to PSE interest, compounded daily, at the rate of [REDACTED] per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Permit, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Permit by Western.

11. Taxes. Western shall pay (except as otherwise required by law) all fees and taxes applicable to or incurred in connection with the Work, the Equipment or the system of which the Equipment constitutes a part. Subject to the foregoing, PSE shall pay all taxes and other fees or charges attributable to each Site (including, without limitation, debt and ground lease obligations).

12. Site Acceptance.

12.1 Western will be deemed to have accepted the Site upon execution of this Site Permit. Conducting feasibility and cost assessments or other preliminary inspections on the Site prior to execution of this Site Permit shall not be deemed to be acceptance.

12.2 Acceptance of the Site by Western in accordance with paragraph 12.1 shall be conclusive evidence that Western:

12.2.1 accepts the Site as suitable for the Permitted Activities;

12.2.2 accepts the Site and any structure on the Site and every part and appurtenance thereof "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS"; and

12.2.3 releases, and waives all claims against, PSE in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes, except as expressly provided otherwise in this Agreement.

12.3 PSE does not warrant the suitability of the Site for the purposes for which Western may desire to use it (including, without limitation, the Permitted Activities); nor does PSE warrant the adequacy of the Site's location, its condition nor the condition of any structure or appurtenances for any purpose. Western acknowledges that, in accepting the Site (and any and all structures thereon used by Western for Permitted Activities) in its "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS" condition, PSE makes no representations or warranties whatsoever concerning the Site and/or such structures, or any aspect of their status or condition, and that Western is not in any way relying on information disclosed by PSE with respect thereto, or otherwise in PSE's possession with respect thereto; rather, Western is solely relying on its own inspections and assessments with respect to the condition or status of the Site and/or such structures.

13. Term and Termination.

13.1 The term of this Permit (the "Term") will commence on the date of this Permit and, unless earlier terminated as provided elsewhere in this Permit, will end on the expiration of the Master Agreement.

13.2 The Term will terminate automatically upon the first of the following to occur:

13.2.1 the term of the Master Agreement at any time expires or is terminated for any reason;

13.2.2 any certificate, permit, license or approval affecting Western's ability to use the Site in the manner originally intended by Western is finally rejected or Western has ceased pursuing such certificate, permit, license or approval; or

13.2.3 any previously issued certificate, permit, license or approval affecting Western's ability to use the Site is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency, and all appeal periods have expired.

13.3 PSE may at any time terminate the Term and all of Western's rights to use the Site upon:

13.3.1 sixty (60) days' prior written notice to Western if any Permitted Activity unreasonably interferes with (a) PSE's or any other prior existing user's use of the Site, or (b) access to or around the Site or any structure adjacent to the Site by PSE or any other prior existing users of PSE's property on or adjacent to the Site and Western fails to cure such interference to PSE's reasonable satisfaction within such sixty (60)-day period, or

13.3.2 the occurrence of any Event of Default.

13.4 Western may terminate the Term upon thirty (30) days' prior written notice to PSE if Western is unable (e.g., for technological reasons) to use the Site for the Permitted Activities or, due to significant opposition by any third party, it appears unlikely that zoning can be obtained for the Site in a timely fashion; provided, however, that Western shall use reasonable efforts to obtain such zoning and/or resolve such opposition.

#### 14. Default.

14.1 The occurrence of any one or more of the following events constitutes an "Event of Default" by Western under this Permit:

14.1.1 Western undertakes any activities on the Site other than the Permitted Activities;

14.1.2 Western fails to pay when due the full amount of any fee or other payment under this Permit, where such failure continues for fifteen (15) days after written notice thereof by PSE to Western;

14.1.3 Western fails to cure any other default under or breach of any provision of this Permit (i.e., other than a default or breach covered by paragraph 11.1.1) within thirty (30) days after PSE gives Western written notice of such default or breach; except such thirty (30)-day cure period will be extended as reasonably necessary to permit

Western to complete cure so long as Western commences cure within the thirty (30)-day cure period and thereafter continuously and diligently pursues and completes such cure;

14.1.4 three (3) or more defaults by Western in the payment of any fee or other payments under the Permit which would allow PSE to issue a notice of default in any twelve (12)-month period, which such occurrence will constitute a noncurable material default and breach of this Permit;

14.1.5 Western deserts, abandons, or vacates any portion of a Site and fails to maintain any and all Equipment remaining at the Site.

14.2 If an Event of Default occurs, PSE (without notice or demand except as expressly required above) may, in addition to any other right or remedy to which PSE may be entitled under this Permit or applicable law, recover from Western an amount equal to the sum of the following:

14.2.1 the actual costs of removing the Equipment and restoring the Site to its original condition;

14.2.2 the Annual Fees for the Site until such time as the Site is restored to its original condition, plus interest thereon from the date due until paid according to the terms of this Permit;

14.2.3 the amount by which the Annual Fees and other benefits that PSE would have received under this Permit for the remainder of the Term after the date of termination exceeds the amount of the fair market rental value for the remainder of the Term that Western proves could be reasonably avoided, discounted at the discount rate on the date of termination of the Federal Reserve Bank of the federal reserve district where the Site is located plus [REDACTED] and

14.2.4 all other sums of money and damages to which PSE may be entitled hereunder or under applicable law.

15. **Effect of Termination.** Within sixty (60) days after termination of the Term, Western shall remove all Equipment from the Site and restore the Site to its original condition except for reasonable use, wear and tear. Western will repair any damage to the Site caused during the removal of the Equipment. Following expiration of the above sixty (60)-day period, PSE shall furnish to Western a list of any removal, restoration, repair or other work that remains to be completed at the Site. Western will thereafter complete the work specified on the list within ten (10) days after receipt of the list from PSE. If Western shall fail to complete the specified work within the ten (10)-day period, PSE may complete the work, or have the work completed through the most expeditious means available, at Western's sole risk and expense and Western shall reimburse PSE for the entire expense thereby incurred.

16. **Release, Indemnity, Hold Harmless and Limitation of Liability.**

16.1 Western releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the



Term) out of or in connection with the conduct of the Permitted Activities (including, without limitation, the location of any Equipment at the Site, the performance of the Work, or the operation of the Equipment or the system of which the Equipment is a part), the enforcement of this Permit by PSE, any default under or breach of this Permit by Western or the acts or omissions of Western or any of its Support, the respective successors and assigns of Western or any of its Support, the directors, officers, employees and agents of each of the foregoing, or anyone acting on Western's behalf in connection with this Permit. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that Western shall not be required to so indemnify any Indemnitee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence or willful misconduct of any Indemnitee(s). In connection with any action to enforce this paragraph 17.1, Western waives any immunity, defense, or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit the Equipment on the Site for the fees described in this Permit only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity and hold harmless shall be construed broadly in favor of the Indemnitees.

**16.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, PSE SHALL NOT HAVE ANY LIABILITY TO WESTERN FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF WESTERN FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.**

**16.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, WESTERN SHALL NOT HAVE ANY LIABILITY TO PSE FOR ANY LOSS OF PROFIT OR REVENUE, CLAIMS OF CUSTOMERS OF PSE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF WESTERN HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.**

**16.4 PSE'S LIABILITY (WHETHER IN TORT, CONTRACT OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF PSE) UNDER THIS PERMIT OR WITH REGARD TO THE SITE SHALL IN NO EVENT EXCEED THE COMPENSATION ACTUALLY PAID TO PSE UNDER THIS PERMIT WITH RESPECT TO THE SITE.**

**17. Worker's Compensation, Insurance and Bonds.**

17.1 Western shall ensure that Western and all persons undertaking any Permitted Activities, including without limitation Western's Support, maintain in effect at all times, coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. Western shall furnish to PSE such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as PSE may request.

17.2 Western shall secure and maintain in effect at all times during the Term the following insurance:

17.2.1 fire insurance, with endorsements for extended coverage vandalism, and malicious mischief, on the Site, in an amount not less than ninety percent (90%) of the full replacement cost of the Site (including, without limitation, all equipment and facilities located thereon); and

17.2.2 Commercial General Liability Coverage, including personal injury, bodily injury, property damage, operations hazard, independent contractor coverage, contractual liability, products and completed operations liability and stop gap coverage, in limits not less than five million dollars (\$5,000,000) for each occurrence (combined single limit) with Western named as insured therein and PSE named as an additional insured therein as their respective interests may appear.

17.3 All required insurance policies must be taken out with reputable national insurers that are licensed to do business in the jurisdiction where the Site is located. Western will deliver to PSE a Certificate of Insurance in the form attached to this Permit as Appendix 5 prior to commencement of performance of any of the Work. All policies must contain an undertaking by the insurers to notify PSE in writing not less than fifteen (15) days before any material change, reduction in coverage, cancellation or termination of the insurance. Western and PSE will each year review the limits for the insurance policies required by this Permit. Policy limits will be adjusted to proper and reasonable limits as circumstances warrant, but policy limits will not be reduced below those stated in paragraph 17.2 and no increases in the policy limits will be effective unless Western and PSE mutually agree.

17.4 Western shall also furnish PSE with such additional assurance and evidence of such insurance as PSE may from time to time request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Permit, Western shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.

17.5 Western shall ensure that any policies of insurance that Western or any of its Support carry as insurance against property damage or against liability for personal injury (including death) or property damage shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies, Western hereby waive all rights of subrogation against the Indemnities.

17.6 All insurance carried by Western or any of its Support shall be primary insurance with respect to the interests of PSE, and any insurance or self-insurance maintained by PSE is in excess and not contributory insurance with the insurance required hereunder.

17.7 The requirements of this Permit as to insurance and acceptability to PSE of insurers and insurance to be maintained by Western are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by Western under this Permit.

**18. Assignment, Successors and Assigns.**

18.1 Western shall not assign this Permit or any portion of its rights in this Permit, except as follows:

18.1.1 to any person or entity that controls, is controlled by or under common control with Western (the "Acquiring Affiliate"); provided that Western gives PSE written notice of any such assignment or transfer and pays all amounts then outstanding and owing to PSE under this Permit; provided further that the Acquiring Affiliate certifies to PSE in writing (and provides such documents as may be requested by PSE to establish) that the Acquiring Affiliate (i) will assume all of the obligations of Western under this Permit, and (ii) and will comply with all of the provisions of this Permit; and provided further that Western furnishes to PSE such information regarding the Equipment affected by such assignment or transfer as may reasonably be requested by PSE;

18.1.2 to Western's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by Western, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of Western under this Permit; or

18.1.3 to any person that, after first receiving FCC and all other regulatory approvals, acquires Western's radio communications business in the market in which the Site is located.

18.1.4 to any other person or entity with the prior written consent of PSE, which consent shall not be unreasonably withheld or delayed.

18.2 Except as specifically provided in paragraph 18.1, any assignment or apportionment, or purported assignment or apportionment of this Permit, whether it be express, by operation of law or otherwise, shall be voidable by PSE. In any event, no assignment or apportionment of this Permit shall relieve Western from any of its liabilities or obligations under this Permit. If at any time the aggregate net worth of Western and any Acquiring Affiliates bound by this Permit is less than seventy-five million dollars (\$75,000,000), or Western fails to furnish PSE evidence of such aggregate net worth as PSE may reasonably request, then PSE will be entitled to immediately terminate the Term upon written notice of such termination to Western. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

**19. Casualty or Condemnation of the Site**

**19.1** If there is a casualty to any structure upon which the Equipment is located, PSE will use reasonable efforts to repair or restore the structure within sixty (60) days. Upon completion of such repair or restoration, Western will be entitled to reinstall the Equipment. In the event such repairs or restoration will, in PSE's reasonable estimation, require more than sixty (60) days to complete:

**19.1.1** Western will be entitled to terminate the Term; or if PSE determines not to restore or repair the Site, then PSE may terminate the Term; or

**19.1.2** unless the Term is terminated as provided in paragraph 19.1.1, Western may immediately install temporary Equipment, including any necessary supporting structure,

(a) at the Site, or

(b) at another unused portion of PSE's property adjacent to the Site, to the extent Western has the rights to do so,

while PSE makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with PSE's own restoration and operation of its facilities.

**19.2** If there is a condemnation of the Site, including without limitation a transfer of the Site by consensual deed in lieu of condemnation, then the Term will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Permit. Western may pursue a separate condemnation award for the Equipment and any relocation or other costs from the condemning authority provided that such award does not reduce the amount of PSE's award.

**20. Subordination.**

**20.1** Western agrees that this Permit is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against PSE's interest or estate therein, and any underlying ground lease or master lease on a particular Site, all without the necessity of having further instruments executed by Western to effect such subordination.

**20.2** This Permit is further subject to any and all restrictions or other terms or conditions contained in the underlying ground lease, master lease, easement, license, franchise, permit or other instrument of authorization or conveyance (an "Instrument") with respect to the Site. Western agrees to commit no act or omission which would constitute a violation of the terms and conditions of any Instrument for the Site insofar as PSE has provided a copy of such Instrument to Western or otherwise notified Western of the term or condition in question.

**20.3** PSE shall not be required to obtain any consent required under any Instrument from the landlord or other party to such Instrument for purposes of this Permit, unless hereafter agreed upon by PSE in writing.

20.4 If a restriction contained in an Instrument for the Site prevents Western from installing, maintaining or operating the Equipment or accessing the Site, Western will be entitled to terminate the Term.

20.5 Upon the termination or expiration of any Instrument with respect to the Site, the Term shall automatically terminate without liability to either Party. Western acknowledges that many of PSE's underlying Instruments grant to the property owner the right to terminate such Instruments, and that in the event of such termination, the Term shall terminate concurrently therewith without liability to either Party.

20.6 Upon any sale or other transfer of all or any portion of the Site, the Term will automatically terminate except to the extent the purchaser or transferee and Western enter into an agreement for Western's continued use of the Site and release PSE from any further obligation or liability with respect to the Site. PSE shall have no obligation to request or obtain such agreement from the purchaser or transferee. PSE shall notify Western of any such sale or transfer promptly after the final documents effecting such sale or transfer are executed and recorded.

20.7 PSE will not materially breach the terms or conditions of any Instrument with respect to a particular Site in a manner that causes Western to lose its use of the Site.

21. Notices. Any notice, request, approval, consent, instruction, direction or other communication given by either PSE or Western to the other under this Permit shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to:

If to PSE: Puget Sound Energy, Inc.  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734  
Attn: Real Estate Department

If to Western: Western Wireless Corporation  
2001 NW Sammamish Rd., Suite 100  
Issaquah, WA 98027  
Attn: PCS Leasing Manager

Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this paragraph 21.

22. No Partnership. This Permit shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

23. Attorneys' Fees. The prevailing Party in any suit, action, or arbitration filed or held concerning this Permit shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

24. **Severability**. The invalidity or unenforceability of any provision of this Permit shall not affect the other provisions hereof, and this Permit shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. **Survival**. All provisions of this Permit which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of the Term or this Permit, shall survive the completion, termination or cancellation of the Term or this Permit.

26. **Headings**. The headings of sections and paragraphs of this Permit are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

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

28. **Force Majeure**. If a Party is delayed or hindered in, or prevented from performance required under this Permit (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of the such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

29. **Memorandum of Use**. Neither Party shall record this Permit or otherwise cause this Permit to be recorded. However, upon the request of either Party, the Parties shall execute, acknowledge, deliver and record a memorandum of use in form and content substantially the same as the attached Appendix 6. Upon termination of the Term for any reason, the Parties shall execute, acknowledge, deliver and record a termination document in form and content acceptable to PSE.

30. **Entire Agreement**. The rights and obligations of the Parties hereunder shall be subject to and governed by this Permit. This Permit sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the Equipment, the Work, the Site and other subject matter of this Permit. This Permit may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.

31. **Applicable Law**. This Permit shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington.

32. **Miscellaneous**. As conditions to approval of this Permit, the following also apply:

32.1 Western shall provide complete detailed final construction drawings before construction begins for PSE's review and approval.

Said drawings shall show in detail the following:

32.1.1 Siting of fenced enclosure area to be located six (6) feet from PSE's West property line,



32.1.2 Location of the telephone cable installation from source to the equipment cabinets,

32.1.3 grounding design of the equipment and fencing, and

32.1.4 Western acknowledges PSE's intention to relocate the West fence of the substation to a point lying 6 feet East of the West property line. Western shall accommodate access to their equipment by foot adjacent to the substation fence. No access to the substation yard is permitted without prior notification and escort by qualified PSE personnel. In the event vehicular access to the site is required, Western shall contact PSE and arrange for a PSE escort through the substation yard area.

32.2 A list of materials and equipment provided to PSE in advance of construction for PSE's review and approval. Upon arrival, materials will be delivered to the site of a mutually acceptable location and accepted by PSE before construction commences.

32.3 Due to drainage problems experienced at this site, Western, in addition to any additional wireless carrier located at this site, shall design and construct such drainage system as may be required by either the City of Mercer Island and/or PSE.

<b>WESTERN:</b> Western Wireless Corporation By: <u></u> Its: <u>Vice President</u> Date Signed: <u>Sept. 22, 1997</u>	<b>PSE:</b> Puget Sound Energy, Inc. By: <u></u> Howard A. Strong Its: <u>Manager Real Estate</u> Date Signed: <u>Sept. 8, 1997</u>
---	--

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KING )

On this 8<sup>th</sup> day of SEPTEMBER, 1997, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared HOWARD A. STRONG, to me known to be the person who signed as MANAGER REAL ESTATE of PUGET SOUND ENERGY, INC., the Corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument on behalf of said Corporation.

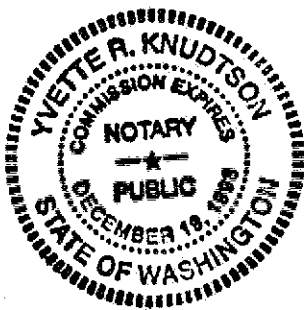
WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Wayne Bressler  
Print Name: WAYNE BRESSLER  
Notary Public in and for the State of Washington,  
Residing at SNOWHOMISH  
My commission expires 8-15-98

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF King )

On this 22<sup>nd</sup> day of September, 1997, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared David A. Miller to me known to be the Vice President of Western Wireless Corporation that executed the foregoing instrument and acknowledged the same to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



Yvette R. Knudtson  
Print Name: Yvette R. Knudtson  
Notary Public in and for the State of WA  
Residing at King County  
My commission expires 12-19-98



**LIST OF APPENDICES  
TO  
GENERAL CONDITIONS OF SITE PERMIT**

<u>Appendix</u>	<u>Title</u>
1	Site
2	Equipment
3	Site Development Plan
4	Annual Fees
5	Certificate of Insurance
6	Memorandum of Use

## APPENDIX 1

### Site

The site is known as a portion of PSE's South Mercer Substation located at 8477 Southeast 68th Street, Mercer Island, Washington. The proposed site consists construction a new 130 foot tall steel monopole and the installation of an antenna array located on top with radio equipment cabinets located on a fenced 9 1/5 foot by 12 foot concrete pad placed with the West edge of said equipment pad being 6 feet East of the West property line. The monopole and fenced equipment enclosure is being designed to accommodate one additional wireless communications carrier. PSE's South Mercer Substation is legally described as follows:

The South 150 feet of the North 180 feet of the East 170 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., King County, Washington, EXCEPT the South 120 feet of the North 150 feet of the East 120 feet thereof

AND

The South 120 feet of the North 150 feet of the East 120 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of said Section 30.

## **APPENDIX 2**

### **Equipment**

A list of materials and equipment provided to PSE in advance of construction for PSE's review and approval. Upon arrival, materials will be delivered to the site of a mutually acceptable location and accepted by PSE before construction commences.

**APPENDIX 3**

**Site Development Plan**

To be submitted by Western for review and approval by PSE.

## APPENDIX 4

### Annual Fees

#### I. DEFINITIONS

- Notes:
- Cost of utilities to service the permitted use to be borne by Western.
  - Cost of new poles/structures for Western facilities to be borne by Western.

In accordance with the terms of the Master Agreement, the Annual Rental Rate for the Site is [REDACTED]

See Master Agreement for treatment of Escalation and Rent Adjustments

**APPENDIX 5**

**Certificate of Insurance**

**APPENDIX 6**

**Memorandum of Use**

Attached, to be completed, executed and recorded upon execution of this permit.

FILED FOR RECORD AT THE REQUEST OF:  
Puget Sound Energy, Inc.  
Real Estate Department  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734



### MEMORANDUM OF USE

Reference #:  
Grantor: Puget Sound Energy, Inc.  
Grantee: Western Wireless Corporation  
Legal Description: Ptn of SW, NW Sec 30, Twn 24 N, Rng 5 E  
Assessor's Property Tax Parcel: 302405-9095

This Memorandum of Use is dated this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by and between Puget Sound Energy, Inc., a Washington corporation ("Lessor") and Western Wireless Corporation, a Washington corporation ("Lessee").

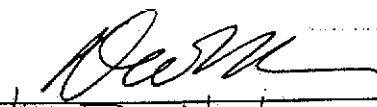
Lessor and Lessee have entered into a Communications Site Permit ("Permit") dated \_\_\_\_\_, 1997, for the purpose of locating unmanned radio communications equipment and related facilities, which includes in part the following terms:

1. Permitted Premises. The real property demised by the Permit is a portion of that described in Exhibit A, attached hereto and incorporated herein by this reference.
2. Term of the Permit. The initial term of the Permit is for a twenty (20)-year period commencing on \_\_\_\_\_ and shall automatically expire at midnight on \_\_\_\_\_.
3. Successors and Assigns. Subject to the restrictions on assignments and subletting by Lessee, the Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the respective parties.
4. Ratification of Permit. The parties by this Memorandum of Use intend to record a reference to the Permit and do hereby ratify and confirm all terms and conditions of the Permit and do hereby declare that Permitted Premises, located on a portion of the real property described on Exhibit A, is in all respects subject to all of the applicable provisions contained in the Permit.

Lessor  
Puget Sound Energy, Inc.

Lessee  
Western Wireless Corporation

By: \_\_\_\_\_  
Manager Real Estate

By:   
Title: Vice President



STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared HOWARD A. STRONG, to me known to be the person who signed as MANAGER REAL ESTATE of PUGET SOUND ENERGY, INC., the Corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument on behalf of said Corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for the State of Washington,  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF King )

On this 22nd day of September, 1997, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared David A. Miller to me known to be the Vice President of Western Wireless Corporation that executed the foregoing instrument and acknowledged the same to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



Yvette R. Knudtson  
Print Name: Yvette R. Knudtson  
Notary Public in and for the State of WA  
Residing at King County  
My commission expires 12-19-98

**EXHIBIT "A"**

The South 150 feet of the North 180 feet of the East 170 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., King County, Washington, EXCEPT the South 120 feet of the North 150 feet of the East 120 feet thereof

AND

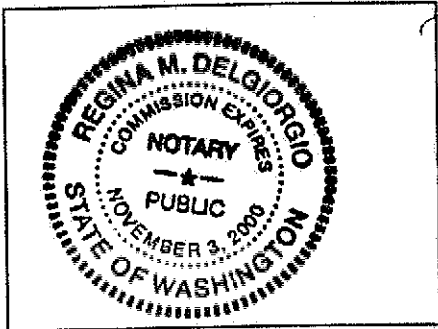
The South 120 feet of the North 150 feet of the East 120 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of said Section 30.

[Notary block for Corporation, Partnership, Limited Liability Company]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that David A. Miller is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as E.D. OF LEGAL AFFAIRS of Western Wireless Corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-30-98



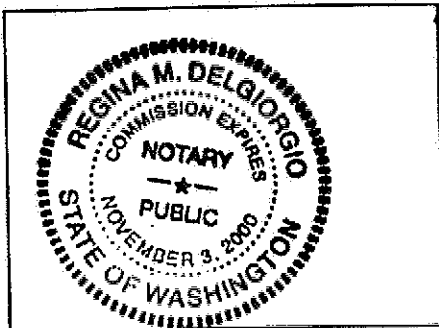
(Use this space for notary stamp/seal)

Regina M DelGiorgio  
Notary Public  
Print Name Regina M DelGiorgio  
My commission expires 11/03/2000

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that David A. Miller is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Vice President of Western PCS BTA I Corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-30-98



(Use this space for notary stamp/seal)

Regina M DelGiorgio  
Notary Public  
Print Name Regina M DelGiorgio  
My commission expires 11/03/2000

KNAPP & ROME, L.L.C.  
ATTORNEYS AT LAW  
1775 SHERMAN STREET, SUITE 1780  
DENVER, COLORADO 80203

GERALD R. ROME

TELEFACSIMILE [REDACTED]  
E-MAIL: KNAPPROME@DVNEXUS.NET

October 13, 1997

VIA FACSIMILE 672-2889

Alyson Buchanan  
U S WEST Communications, Inc.  
1801 California Street, Suite 1150  
Denver, Colorado 80202

Re: Puget Sound Power & Light Company Master Site Agreement with U S WEST  
Wireless Group

Dear Alyson:

The above referenced Master Agreement was sent to us by U S WEST Wireless Group for our legal review. The Master Agreement contained language concerning insurance coverage which we found objectionable and which we requested be deleted from the Master Agreement or revised. It appears that the Master Agreement containing the objectionable language was forwarded to U S WEST for execution without our knowledge or approval, and was signed. Subsequently, three individual Site Permits or licenses under the Master Agreement were forwarded to U S WEST for signature. One was signed, while the other two have not yet been signed. It is my understanding that these three sites are critical sites to the Wireless Group.

The purpose of this letter is to request your review of the insurance language we found objectionable for a determination of whether the language is acceptable given the foregoing circumstances.

Paragraph 17.5 of the Master Agreement provides:

U S WEST shall ensure that any policies of insurance that U S WEST or any of its Support carry as insurance against property damaged or against liability for personal injury (including death) or property damage shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnities. To the extent permitted by its insurance policies, U S WEST hereby waive all rights of subrogation against the Indemnities.

Under Paragraph 16.1, U S WEST provided the following indemnity:

U S WEST releases and shall defend, indemnify and hold harmless the Indemnitie(s) from any and all claims, losses costs, liabilities, damages and expenses . . . arising . . . out of or in connection with the conduct of the Permitted Activities . . . provided, however, that U S WEST shall not be required to so indemnify any Indemnitie(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence or willful misconduct of any Indemnitie(s). . . .

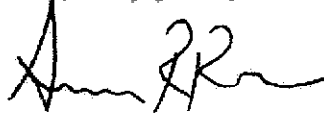
As you can see, the language provides for a waiver of U S WEST's subrogation rights for liability for personal injury on the one hand and then holds Puget Sound harmless except for their negligence or willful misconduct. These two provisions are in conflict and may prevent U S WEST from seeking reimbursement from Puget Sound in the event of contributory negligence by Puget Sound for personal injury.

The second issue deals with providing Puget Sound copies of insurance policies. Paragraph 17.4 states that "U S WEST shall also furnish PSE with such additional assurance and evidence of such insurance (such as copies of all insurance policies) as PSE may from time to time reasonably request." As you know, it is U S WEST's policy not to make copies of insurance available.

In both of these instances, alternative language which meets U S WEST's guidelines was suggested, but never incorporated into the Master Agreement. If either provision is unacceptable, then the only option will be to approach Puget Sound and attempt to renegotiate an already executed Agreement.

I have attached copies of the relevant insurance language for your review. If there are any other issues which you identify, please contact me. Should you have any questions or require additional information, please feel free to contact me. I look forward to hearing your thoughts on these issues.

Very truly yours,



Gerald R. Rome

GRR.\plm  
cc: Charlene Polk  
Shirley Sattler

NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF US WEST HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

**17. Worker's Compensation, Insurance and Bonds.**

**17.1** US WEST shall ensure that US WEST and all persons undertaking any Permitted Activities, including without limitation US WEST's Support, maintain in effect at all times, coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. US WEST shall furnish to PSE such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as PSE may request.

**17.2** US WEST shall secure and maintain in effect at all times during the Term the following insurance:

**17.2.1** fire insurance, with endorsements for extended coverage vandalism, and malicious mischief, on the Site, in an amount not less than [REDACTED] of the full replacement cost of the Site (including, without limitation, all equipment and facilities located thereon); and

**17.2.2** Commercial General Liability Coverage, including personal injury, bodily injury, property damage, operations hazard, independent contractor coverage, contractual liability, products and completed operations liability and stop gap coverage, in limits not less than five million dollars (\$5,000,000) for each occurrence (combined single limit) with US WEST named as insured therein and PSE named as an additional insured therein as their respective interests may appear.

**17.3** All required insurance policies must be taken out with reputable national insurers that are licensed to do business in the jurisdiction where the Site is located. US WEST will deliver to PSE a Certificate of Insurance in the form attached to this Permit as Appendix 5 prior to commencement of performance of any of the Work. All policies must contain an undertaking by the insurers to notify PSE in writing not less than fifteen (15) days before any material change, reduction in coverage, cancellation or termination of the insurance. US WEST and PSE will each year review the limits for the insurance policies required by this Permit. Policy limits will be adjusted to proper and reasonable limits as circumstances warrant, but policy limits will not be reduced below those stated in paragraph 17.2 and no increases in the policy limits will be effective unless US WEST and PSE mutually agree.

**17.4** US WEST shall also furnish PSE with such additional assurance and evidence of such insurance (such as copies of all insurance policies) as PSE may from time to time reasonably request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Permit, US WEST shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.

**17.5** US WEST shall ensure that any policies of insurance that US WEST or any of its Support carry as insurance against property damage or against liability for personal injury (including death)

or property damage shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies, US WEST hereby waives all rights of subrogation against the Indemnities.

17.6 All insurance carried by US WEST or any of its Support shall be primary insurance with respect to the interests of PSE, and any insurance or self-insurance maintained by PSE is in excess and not contributory insurance with the insurance required hereunder.

17.7 The requirements of this Permit as to insurance and acceptability to PSE of insurers and insurance to be maintained by US WEST are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by US WEST under this Permit.

US WEST (but not its successors or assigns unless specifically agreed by PSE in writing at the time of assignment) may satisfy all or a portion of its obligations under this Section 17 through a self-insurance program acceptable to PSE. US WEST shall provide a certificate and/or self-insurance letter, in each case duly executed by an authorized officer of US WEST, which (a) describes program coverages and limits and (b) commits US WEST's self-insurance program to cover any and all obligations in this Agreement.

**18. Assignment, Successors and Assigns.**

18.1 US WEST shall not assign this Permit or any portion of its rights in this Permit, except as follows:

18.1.1 to any person or entity that controls, is controlled by or under common control with US WEST (the "Acquiring Affiliate"); provided that US WEST gives PSE written notice of any such assignment or transfer and pays all amounts then outstanding and owing to PSE under this Permit; provided further that the Acquiring Affiliate certifies to PSE in writing (and provides such documents as may be requested by PSE to establish to PSE's reasonable satisfaction) that the Acquiring Affiliate (i) will assume all of the obligations of US WEST under this Permit, and (ii) is financially able to and will comply with all of the provisions of this Permit; and provided further that US WEST furnishes to PSE such information regarding the Equipment affected by such assignment or transfer as may reasonably be requested by PSE;

18.1.2 to US WEST's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by US WEST, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of US WEST under this Permit; or

18.1.3 to any other person or entity with the prior written consent of PSE.

18.2 Except as specifically provided in paragraph 18.1, any assignment or apportionment, or purported assignment or apportionment of this Permit, whether it be express, by operation of law or otherwise, shall be voidable by PSE. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

CONSENT FOR COLLOCATION OF FACILITIES

This Consent, dated as of March 6<sup>th</sup>, 1998, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and US WEST Wireless, L.L.C., a Delaware limited liability company ("US WEST"). PSE and US WEST are at times referred to herein as "Party" and collectively as the "Parties."

WHEREAS, the Parties have previously entered into a Master Agreement for Location of Facilities ("Master Agreement"). Pursuant to the terms of the Master Agreement, the Parties on September 11, 1997, entered into a Permit for Location of Facilities ("Permit") allowing US WEST the right to use the real property of PSE ("Site") for the installation, operation and maintenance of communications equipment as specified in the Permit;

WHEREAS, US WEST is willing to allow Western PCS BTA.I Corporation, a Delaware corporation ("Western"), to collocate its communications equipment to the Site for the purpose of installing, maintaining, and operating its equipment subject to the terms and conditions contained in the Permit.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties agree as follows:

- 1. PSE hereby consents to and authorizes Western to collocate its equipment as specified in the attached Exhibit A for the purpose of installing, operating and maintaining its equipment in accordance with the site development plan attached hereto as Exhibit B. This Consent is subject to and conditioned upon full compliance with the terms and conditions of the Permit.

Puget Sound Energy, Inc.

By: [Signature]

Its: MANAGER REAL ESTATE

US WEST Wireless, L.L.C.

By: [Signature]  
V.P. OPERATIONS & ENGINEERING

Its: \_\_\_\_\_



After recording, please return to:

Western PCS BTA I Corporation  
2001 NW Sammamish Road, Suite 100  
Issaquah, Washington 98027  
Attn: PCS Lease Coordinator  
Phone: [REDACTED]  
Fax: [REDACTED]

## ASSIGNMENT AND ASSUMPTION OF PERMIT FOR LOCATION OF FACILITIES AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned, WESTERN WIRELESS CORPORATION, a Washington corporation ("Assignor") does hereby assign, transfer and deliver to WESTERN PCS BTA I CORPORATION, a Delaware corporation ("Assignee"), all of Assignor's right, title and interest in and to that certain *Permit for Location of Facilities Agreement* dated as of *September 22, 1997* between Puget Sound Energy as Permittor and Assignor as Permittee, for the use of the premises located in King County, State of Washington, known as the *South Mercer Substation, Site No. SE 2525-A* ("Agreement"), together with any and all amendments, assignments or modifications to the Agreement. Said Agreement provides for use of the premises as more particularly described in the Agreement and incorporated herein by this reference.

Assignee hereby accepts such assignment and in consideration thereof, assumes and agrees to discharge all of the liabilities and obligations of Assignor under the Agreement from and after delivery of this ASSIGNMENT AND ASSUMPTION OF PERMIT FOR LOCATION OF FACILITIES AGREEMENT (the "Assignment and Assumption").

Assignee certifies to Puget Sound Energy as required under Section 18.1.1 of the Agreement, that Assignee assumes all obligations of Assignor under the Agreement and shall comply with all of the provisions of the Agreement. Assignor shall furnish to Puget Sound Energy such information regarding Assignor's equipment, installed at the site, which is affected by such assignment, as may reasonably be requested by Puget Sound Energy.

This Assignment and Assumption may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Effective as of the 30 day of March, 1998.

Assignor: WESTERN WIRELESS CORP.

By: [Signature]

Its: EXECUTIVE DIRECTOR OF  
LEGAL AFFAIRS

Assignee: WESTERN PCS BTA I CORP.

By: [Signature]

Its: VICE PRESIDENT



**PERMIT FOR LOCATION OF FACILITIES  
(South Mercer Substation)**

This Permit, dated as of 9-11, 1997, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and US WEST Communications Wireless Group, a division of US WEST Communications Inc., a Colorado corporation ("US WEST"). PSE and US WEST are at times referred to herein where appropriate individually as a "Party" and collectively as the "Parties".

The Parties agree as follows:

1. **Permit.** For and in consideration of the mutual benefits to be derived therefrom, PSE hereby grants permission to US WEST, subject to the terms and conditions of this Permit, to use the real property described in the attached Appendix 1 (the "Site"). The rights and obligations of PSE and US WEST arising under this Permit will apply to and be binding upon their respective officers, employees, agents and representatives, and its suppliers and subcontractors of any tier acting on their behalf in connection with the performance of the Work (as defined below) or this Permit (collectively, the "Support"). Each party shall be solely responsible for the performance, nonperformance, acts and omissions of its Support.

2. **Use of the Site.** US WEST shall have the right to use the Site for the purpose of undertaking the following activities (the "Permitted Activities"):

2.1 installation, operation and maintenance of the equipment specified in the attached Appendix 2 (the "Equipment") in accordance with the site development plan attached hereto as Appendix 3 (the "Site Development Plan") and all other provisions of this Permit; and

2.2 performance of the installation, maintenance, repair, relocation, removal and other work specified in the Site Development Plan (collectively, the "Work") in accordance with the Site Development Plan and all other provisions of this Permit; and

2.3 obtaining, at US WEST's sole cost and expense, telephone service from any utility company that provides such service to the Site, and arranging for the installation of a separate meter and main breaker, subject to PSE's right to approve the exact location of proposed utility routes and the manner of installation; and

2.4 access to and from the Site for purposes of undertaking the activities specified in paragraphs 2.1, 2.2 and 2.3, in accordance with the following:

2.4.1 access for construction, routine maintenance and repair and other non-emergency visits shall only be during normal business hours (defined as Monday through Friday, 8 am to 5 pm) unless otherwise agreed upon by the Parties;

2.4.2 in the event of emergency, US WEST may access the Site twenty-four (24) hours per day, seven days per week, by calling the PSE emergency telephone number set forth in paragraph 7 and requesting such access;

2.4.3 access to the Site may be by foot or motor vehicle, including trucks; and

2.4.4 access to the Site shall be subject to such reasonable conditions as may be imposed by PSE from time to time.

3. **Limitations on Use.** Except and only as specifically authorized in paragraph 2, US WEST shall not enter upon the Site or make any use thereof. Without limiting the generality of the foregoing:

3.1 US WEST shall, at all times, undertake the Permitted Activities in a manner so as to prevent bodily harm to persons (whomsoever) and damage to property (whatsoever). Precautionary measures shall include, without limitation, reasonable site security measures (e.g., fencing, signage, lighting, security guards, etc.) necessary to prevent access to the Site during such times as the Permitted Activities may cause the Site to be in an unsafe or unsecured condition.

3.2 US WEST shall, at all times, undertake the Permitted Activities in a manner that does not disturb or interfere in any way with the operations of PSE or any prior existing users of the Site, or otherwise in a manner that would impair the safe, continuous and reliable operation of PSE's utility systems or improvements. Without limiting the generality of the foregoing, US WEST shall at all times:

3.2.1 conduct the Permitted Activities so as to maintain legal and safe clearances from PSE's utility systems or improvements;

3.2.2 take all prudent precautions to ensure that no persons or property come into contact with PSE's utility systems or improvements; and

3.2.3 conduct the Permitted Activities so as to maintain access along and across the Site to PSE's utility systems and improvements, sufficient to allow the free passage of all equipment, vehicles, personnel and other items as may be necessary or convenient for the maintenance, repair and replacement of PSE's utility systems and improvements.

If, at any time, the Permitted Activities shall disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, US WEST shall immediately cease and discontinue such Permitted Activities. If US WEST anticipates that any Permitted Activity may disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, US WEST shall request in writing, not less than fourteen (14) days in advance of the date required, that PSE take such action with respect to its systems or improvements as is necessary to accommodate such Permitted Activity. PSE may elect to accommodate such Permitted Activity in response to such request; provided, however: (a) all costs and expenses incurred by PSE thereby shall be reimbursed to PSE, and (b) PSE may refuse any or all such requests or may discontinue actions undertaken in response to such requests, as PSE, in its sole discretion, may choose. Prior to PSE incurring any cost or expense for which it will seek reimbursement from US WEST, PSE shall submit to US WEST a cost estimate and receive written authorization to proceed with the same.

**3.3** US WEST shall not undertake any activities and shall not use or permit any use of the Site that will in any way:

**3.3.1** be in noncompliance with, or otherwise conflict with, any applicable laws, regulations, ordinances, rules, orders or other requirements, now or hereafter in effect, of any governmental authority (all laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference);

**3.3.2** cause or constitute any nuisance, noxious odors, unsafe condition or waste in or about the Site;

**3.3.3** interfere with the rights or disturb the use and enjoyment of PSE, other users of the Site, or any other person lawfully on the Site;

**3.3.4** cause a cancellation, increase the premiums for or deductibles under or otherwise affect any fire, casualty, property, liability or other insurance covering the Site, any activities conducted upon or from the Site, or any accident, act, error, omission, fault, negligence or strict liability occurring on or about the Site; or

**3.3.5** cause or allow the generation, storage, processing, handling, transport, spill, disposal or release of any dangerous, hazardous or extremely hazardous material, waste or substance at, upon or in any way affecting the Site (including, but not limited to, any such materials, waste or substances subject to regulation by any federal, state or local law pertaining to the protection of human health or the environment).

**3.4** US WEST shall not, and shall not permit others to, install, store, maintain or operate any equipment, fixtures, improvements, supplies, vehicles or other items on the Site except for the Equipment (which Equipment shall be installed, maintained and operated at US WEST's sole cost, risk and expense).

**3.5** US WEST shall obtain and comply (and shall ensure that all of US WEST's Support comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to undertake any Permitted Activity. US WEST shall furnish to PSE such evidence thereof as PSE may request.

**3.6** If, in the reasonable opinion of PSE, the Equipment or any Permitted Activity violates, jeopardizes or unreasonably interferes with: (a) any laws, regulations, rules, orders or other regulatory authorizations, permits or approvals that may concern PSE's present or future use and enjoyment of the Site, or (b) any proprietary rights such as any contract, permit, license, franchise, right-of-way, easement or other rights of PSE, and US WEST fails to correct the problem within thirty (30) days after written notice from PSE (or such shorter or longer period of time as is expressly required or permitted under the applicable law, regulatory authorization, permit or approval or applicable proprietary right of PSE), PSE may require that US WEST immediately remove any or all Equipment from and cease any Permitted Activity at the Site. If US WEST fails to remove any Equipment within fifteen (15) days after PSE makes its request, PSE may remove the Equipment at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

**3.7** US WEST shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Permitted Activities. US WEST shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at US WEST's expense and US WEST shall reimburse PSE for the entire expense thereby incurred. US WEST may contest the validity of any such lien provided that US WEST delivers a bond to PSE in the amount of the contested lien.

**3.8** In undertaking the Permitted Activities, US WEST shall comply and shall ensure that all of its Support comply with all applicable industry standards and codes, and all of PSE's standard practices, specifications, rules and regulations provided by PSE to US WEST on request. US WEST shall furnish such documents as may be reasonably required to effect or evidence such compliance.

**3.9** US WEST shall comply with the following in connection with its performance of the Work:

**3.9.1** US WEST shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. US WEST shall expeditiously and efficiently perform the Work in accordance with the Site Development Plan and the provisions of this Permit. US WEST shall not independently hire any PSE employee to perform any of the Work (e.g., other than in the course of his or her employment with PSE with respect to Work that PSE agrees to perform for US WEST).

**3.9.2** US WEST shall perform the Work in a workmanlike and skillful manner. US WEST shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such reasonable requirements and specifications as PSE shall from time to time prescribe and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to the construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.

**3.9.3** US WEST shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Permit. If US WEST fails or refuses to perform any Work required by this Permit or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

**3.9.4** Installation of the Equipment or the performance of other Work shall not adversely affect the structural integrity, maintenance or marketability of the Site or any structure or improvement on or surrounding the Site.

**3.9.5** US WEST shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. US WEST shall, if so requested by PSE, remove from performance of the Work any personnel (including, without limitation, any Support) whom PSE finds to be incompetent, careless or otherwise unsafe.

**3.9.6** US WEST hereby acknowledges that PSE employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between PSE and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Permit, US WEST will cooperate with PSE and take such action as may be reasonably requested by PSE to fully and expeditiously resolve such dispute.

**3.9.7** US WEST shall, at all times, keep the Site cleared of rubbish, refuse and other debris generated by US WEST or its Support and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, US WEST shall promptly remove all rubbish, refuse and other debris generated by US WEST or its Support and all of its Equipment and surplus materials.

**3.9.8** The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to inspection and testing by PSE. US WEST may, at its option, have a representative present at the Site during any such inspection or testing by PSE. If, in PSE's reasonable judgment, the performance of any Work requires one or more representatives of PSE to be present at the Site during the performance of such Work, then US WEST will reimburse PSE for any and all reasonable costs and expenses thereby incurred by PSE. US WEST shall not be responsible of any cost or expense incurred by PSE or its agents unless US WEST has received a written estimate of the cost and expense in advance and US WEST has authorized the same in writing. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or non-compliance by PSE shall relieve US WEST of any of its obligations under this Permit.

**3.9.9** US WEST shall promptly settle or resolve all complaints received by US WEST from third Parties arising out of or in connection with performance of the Work. US WEST shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, US WEST shall use its best efforts to maintain and promote good public relations for PSE.

**3.9.10** US WEST acknowledges and anticipates that due to electrical service demands or emergency conditions, the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. US WEST shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

**3.9.11** If any part of the Work depends upon the results of other work by PSE or others, US WEST shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that render it unsuitable for performance of the Work. Failure of US WEST to so notify PSE shall constitute an acceptance by US WEST of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

**3.10** Upon completion of Permitted Activities which may disturb the surface or subsurface of the Site (or any improvements thereon), US WEST shall restore the Site (and any improvements thereon) to the condition that existed prior to such disturbance, reasonable wear and tear excepted.

**3.11** If, in undertaking Permitted Activities (or activities off-Site in furtherance of Permitted Activities), US WEST shall cause significant public concern with or opposition to its proposed use of the Site, and PSE shall reasonably conclude that such public concern or opposition will materially interfere with its use of the Site or otherwise with the conduct of PSE's business, then PSE may direct US WEST to mitigate to the extent necessary such acts (or omissions) giving rise to such public opposition or concern.

**3.12** US WEST shall copy PSE's Director of Planning & Work Practices on all notices and other correspondence received or given by US WEST in connection with any local jurisdiction review process involving any Permitted Activities undertaken or proposed to be undertaken by US WEST at the Site.

#### **4. Equipment, Structures and Facilities**

**4.1** US WEST shall maintain all Equipment on the Site in good and safe condition and in a manner that does not materially affect the structural integrity of any structure on the Site. If US WEST fails to do any maintenance within thirty (30) days after receipt of notice from PSE requesting such maintenance, then PSE may, at its option, do such maintenance at US WEST's expense and US WEST shall reimburse PSE for the entire expense thereby incurred. If US WEST commences the requested maintenance within thirty (30) days after any written notice from PSE requesting such maintenance and thereafter continuously and diligently pursues and completes such maintenance, then the thirty (30) day cure period will extend for an additional sixty (60) days to permit US WEST to complete the requested maintenance.

**4.2** PSE shall at all times during the Term of this Permit, at PSE's sole cost and expense, maintain any PSE-owned structures used by US WEST for Permitted Activities in a structurally good and safe condition. If US WEST is unable to use such structure due to PSE's maintenance activities, US WEST may immediately install temporary Equipment on any alternate location specified in the Site Development Plan while PSE makes repairs to the Site.

**4.3** If PSE at any time relocates, replaces or removes any pole, tower or other facility or structure on which any Equipment is attached, or PSE otherwise determines in its reasonable judgment that any Equipment must be removed or relocated to accommodate PSE's use of or activities on the Site, then US WEST shall, at its sole cost and expense, remove or relocate such Equipment at such times and in the manner directed by PSE. If US WEST fails to remove or relocate its Equipment within one hundred eighty (180) days (or such shorter period of time as PSE may reasonably require under the circumstances) after being directed to do so by PSE, PSE may remove or relocate the Equipment at US WEST's sole risk and expense, and US WEST shall reimburse PSE for the entire expenses thereby incurred.

**4.4** In the event US WEST is permitted to and does install any pole, tower or other structure as part of the Equipment on the Site, PSE shall have the right, subject to such reasonable rules and requirements as the parties may agree upon in writing, to install one or more items of equipment on such pole, tower or other structure for PSE's internal purposes only, provided that the pole, tower or structure in question is structurally capable of bearing the weight of PSE's equipment. Such installation and use shall be at PSE's cost and expense, but US WEST shall not levy any charge or fee for PSE's use thereof.

5. **Nonexclusivity**. This Permit is nonexclusive, and PSE may grant rights to others to use the Site for any purpose not inconsistent with US WEST's rights hereunder, including competing telecommunications companies. PSE does not warrant title to the Site and shall not be liable for defects thereto or failure thereof. Without limiting any other provision of this Permit, US WEST will promptly resolve technical interference problems with other radio communications equipment located at the Site on the date of this Permit or any radio communications equipment located at the Site on any future date when US WEST modifies or supplements its Equipment at the Site. PSE shall not permit any subsequent use to the site to install or operate its communication equipment in a manner that will interfere with US WEST's use and enjoyment of the site.

6. **Cooperation of PSE**. PSE shall, at US WEST's expense, support US WEST's efforts to secure any documents or applications required (i.e., by virtue of PSE's ownership of or rights in the Site) to be obtained by US WEST from any governmental agency with jurisdiction in order for US WEST to obtain the necessary licenses, permits or other approvals from such governmental agency for the Permitted Activities; provided, however, that PSE shall not under any circumstances be obligated to execute any application or other document that, in PSE's sole judgment, will in any way impair, limit or adversely affect PSE's rights in or ownership or use of the Site, nor shall PSE be obligated to provide such support if the same requires a commitment of resources of any kind of a value in excess of five hundred dollars (\$500.00).

7. **Emergencies**. In the event of an emergency relating to the Equipment or the Site, US WEST shall immediately correct any safety or use problems, even if full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

PSE: [REDACTED]

US WEST: [REDACTED]

Each Party shall promptly notify the other of any change in such party's emergency phone number.

8. **Ownership and Risk of Loss of Equipment**.

8.1 The Equipment located at the Site pursuant to the terms of this Permit will at all times be and remain the property of US WEST and will not be subject to any lien or encumbrance created or suffered by PSE. US WEST has the right to make such filings with the Washington State Department of Licensing (e.g., UCC-1 Financing Statement) as it deems necessary or desirable to evidence its ownership of the Equipment. Notwithstanding the foregoing, if, upon termination or expiration of the Term, the Equipment is not removed from the Site and the Site restored according to the terms of this Permit, such Equipment shall be deemed abandoned thirty (30) days following such termination or expiration and PSE's waiver of lien shall thereafter be void and of no further force and effect.

8.2 US WEST shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work.



9. **Examination of Records.** US WEST shall promptly furnish PSE with such non-confidential information related to the Work or the Equipment as may from time to time be reasonably requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have reasonable access to and the right to examine all of US WEST's non-confidential books, documents, papers and records which are related to the Work, the Equipment or this Permit.

10. **Compensation.**

10.1 The "Annual Fee" shall mean the annual fee for US WEST's use of the Site as calculated in accordance with the schedule set forth in the attached Appendix 4 and the following:

10.1.1 the Annual Fee will be payable on or before the date of this Permit and thereafter on the first day of the first month following each anniversary of the commencement date of the Master Agreement, and

10.1.2 the Annual Fee will be prorated in the first and last year of this Permit to coincide with the anniversary of the commencement date of the Master Agreement, except that the Annual Fee for the Site will continue past any termination of the Term of this Permit if and until all of the Equipment is removed from the Site and restoration of the Site has occurred according to the provisions of this Permit.

10.2 PSE shall invoice US WEST for all amounts payable by US WEST to PSE under this Permit (including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) as they become due. US WEST shall pay each such invoice in full within thirty (30) days after US WEST's receipt thereof.

10.3 US WEST acknowledges that late payment of any fee or other amounts due to PSE under this Permit will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Permit, the exact amount of which will be extremely difficult, if not impossible, to ascertain.

10.4 US WEST shall pay to PSE interest, compounded daily, at the rate of [REDACTED] per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Permit, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Permit by US WEST.

11. **Taxes.** US WEST shall pay (except as otherwise required by law) all fees and taxes applicable to or incurred in connection with the Work, the Equipment or the system of which the Equipment constitutes a part. Subject to the foregoing, PSE shall pay all taxes and other fees or charges attributable to each Site (including, without limitation, debt and ground lease obligations).

12. **Site Acceptance.**

12.1 US WEST will be deemed to have accepted the Site upon execution of this Site Permit. Conducting feasibility and cost assessments or other preliminary inspections on the Site prior to execution of this Site Permit shall not be deemed to be acceptance.

**12.2** Acceptance of the Site by US WEST in accordance with paragraph 12.1 shall be conclusive evidence that US WEST:

**12.2.1** accepts the Site and any structure on the Site and every part and appurtenance thereof "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS"; and

**12.2.2** releases, and waives all claims against, PSE in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes, except as expressly provided otherwise in this Agreement.

**12.3** PSE does not warrant the suitability of the Site for the purposes for which US WEST may desire to use it (including, without limitation, the Permitted Activities); nor does PSE warrant the adequacy of the Site's location, its condition nor the condition of any structure or appurtenances for any purpose. US WEST acknowledges that, in accepting the Site (and any and all structures thereon used by US WEST for Permitted Activities) in its "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS" condition, PSE makes no representations or warranties whatsoever concerning the Site and/or such structures, or any aspect of their status or condition, and that US WEST is not in any way relying on information disclosed by PSE with respect thereto, or otherwise in PSE's possession with respect thereto; rather, US WEST is solely relying on its own inspections and assessments with respect to the condition or status of the Site and/or such structures.

### **13. Term and Termination**

**13.1** The term of this Permit (the "Term") will commence on the date of this Permit and, unless earlier terminated as provided elsewhere in this Permit, will end on upon expiration of Master Agreement.

**13.2** The Term will terminate automatically upon the first of the following to occur:

**13.2.1** the term of the Master Agreement at any time expires or is terminated for any reason;

**13.2.2** any certificate, permit, license or approval affecting US WEST's ability to use the Site in the manner originally intended by US WEST is finally rejected; or

**13.2.3** any previously issued certificate, permit, license or approval affecting US WEST's ability to use the Site is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency.

**13.3** PSE may at any time terminate the Term and all of US WEST's rights to use the Site upon:

**13.3.1** one hundred twenty (120) days' prior written notice to US WEST if any Permitted Activity unreasonably interferes with (a) PSE's or any other prior existing user's use of the Site, or (b) access to or around the Site or any structure adjacent to the Site by PSE or any other prior existing users of PSE's property on or adjacent to the Site, however PSE agrees not to

terminate in accordance with this paragraph 13.3.1 within 5 (five) years of the date of this site permit, or

**13.3.2** the occurrence of any Event of Default.

**13.4** US WEST may terminate the Term upon one hundred twenty (120) days' prior written notice to PSE if US WEST is unable (e.g., for technological reasons) to use the Site for the Permitted Activities, however US WEST agrees not to terminate in accordance with this paragraph 13.4 within 5 (five) years of the date of this site permit.

**14. Default.**

**14.1** The occurrence of any one or more of the following events constitutes an "Event of Default" by US WEST under this Permit:

**14.1.1** US WEST undertakes any activities on the Site other than the Permitted Activities;

**14.1.2** US WEST fails to pay when due the full amount of any fee or other payment under this Permit, where such failure continues for fifteen (15) days after written notice thereof by PSE to US WEST;

**14.1.3** US WEST fails to cure any other default under or breach of any provision of this Permit (i.e., other than a default or breach covered by paragraph 11.1.1) within thirty (30) days after PSE gives US WEST written notice of such default or breach; except such thirty (30) day cure period will be extended as reasonably necessary to permit US WEST to complete cure so long as US WEST commences cure within the thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure;

**14.1.4** two (2) or more defaults by US WEST in the payment of any fee or other payments under the Permit which would allow PSE to issue a notice of default in any twelve (12) month period, which such occurrence will constitute a noncurable material default and breach of this Permit;

**14.1.5** US WEST deserts, abandons, or vacates any portion of a Site and fails to maintain any and all Equipment remaining at the Site.

**14.2** If an Event of Default occurs, PSE (without notice or demand except as expressly required above) may, in addition to any other right or remedy to which PSE may be entitled under this Permit or applicable law, recover from US WEST an amount equal to the sum of the following:

**14.2.1** the actual costs of removing the Equipment and restoring the Site to its original condition;

**14.2.2** the Annual Fees for the Site until such time as the Site is restored to its original condition, plus interest thereon from the date due until paid according to the terms of this Permit; and

14.2.3 all other sums of money and damages to which PSE may be entitled hereunder or under applicable law.

15. **Effect of Termination.** Within thirty (30) days after termination of the Term, US WEST shall remove all Equipment from the Site and restore the Site to its original condition except for reasonable use, wear and tear. US WEST will repair any damage to the Site caused during the removal of the Equipment. Following expiration of the above thirty (30) day period, PSE shall furnish to US WEST a list of any removal, restoration, repair or other work that remains to be completed at the Site. US WEST will thereafter complete the work specified on the list within ten (10) days after receipt of the list from PSE. If US WEST shall fail to complete the specified work within the ten (10) day period, PSE may complete the work, or have the work completed through the most expeditious means available, at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

16. **Release, Indemnity, Hold Harmless and Limitation of Liability.**

16.1 US WEST releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with the conduct of the Permitted Activities (including, without limitation, the location of any Equipment at the Site, the performance of the Work, or the operation of the Equipment or the system of which the Equipment is a part), the enforcement of this Permit by PSE, any default under or breach of this Permit by US WEST or the acts or omissions of US WEST or any of its Support, its directors, officers, employees and agents or anyone acting on US WEST's behalf in connection with this Permit. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that US WEST shall not be required to so indemnify any Indemnitee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence or willful misconduct of any Indemnitee(s). In connection with any action to enforce this paragraph 16.1, US WEST waives any immunity, defense, or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit the Equipment on the Site for the fees described in this Permit only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity and hold harmless shall be construed broadly in favor of the Indemnitees.

16.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, PSE SHALL NOT HAVE ANY LIABILITY TO US WEST FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF US WEST FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

16.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, US WEST SHALL NOT HAVE ANY LIABILITY TO PSE FOR ANY LOSS OF PROFIT OR REVENUE,

CLAIMS OF CUSTOMERS OF PSE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF US WEST HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

**17. Worker's Compensation, Insurance and Bonds.**

**17.1** US WEST shall ensure that US WEST and all persons undertaking any Permitted Activities, including without limitation US WEST's Support, maintain in effect at all times, coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. US WEST shall furnish to PSE such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as PSE may request.

**17.2** US WEST shall secure and maintain in effect at all times during the Term the following insurance:

**17.2.1** fire insurance, with endorsements for extended coverage vandalism, and malicious mischief, on the Site, in an amount not less than [REDACTED] of the full replacement cost of the Site (including, without limitation, all equipment and facilities located thereon); and

**17.2.2** Commercial General Liability Coverage, including personal injury, bodily injury, property damage, operations hazard, independent contractor coverage, contractual liability, products and completed operations liability and stop gap coverage, in limits not less than five million dollars (\$5,000,000) for each occurrence (combined single limit) with US WEST named as insured therein and PSE named as an additional insured therein as their respective interests may appear.

**17.3** All required insurance policies must be taken out with reputable national insurers that are licensed to do business in the jurisdiction where the Site is located. US WEST will deliver to PSE a Certificate of Insurance in the form attached to this Permit as Appendix 5 prior to commencement of performance of any of the Work. All policies must contain an undertaking by the insurers to notify PSE in writing not less than fifteen (15) days before any material change, reduction in coverage, cancellation or termination of the insurance. US WEST and PSE will each year review the limits for the insurance policies required by this Permit. Policy limits will be adjusted to proper and reasonable limits as circumstances warrant, but policy limits will not be reduced below those stated in paragraph 17.2 and no increases in the policy limits will be effective unless US WEST and PSE mutually agree.

**17.4** US WEST shall also furnish PSE with such additional assurance and evidence of such insurance (such as copies of all insurance policies) as PSE may from time to time reasonably request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of

insurance required under this Permit, US WEST shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.

**17.5** US WEST shall ensure that any policies of insurance that US WEST or any of its Support carry as insurance against property damage or against liability for personal injury (including death) or property damage shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies, US WEST hereby waive all rights of subrogation against the Indemnities.

**17.6** All insurance carried by US WEST or any of its Support shall be primary insurance with respect to the interests of PSE, and any insurance or self-insurance maintained by PSE is in excess and not contributory insurance with the insurance required hereunder.

**17.7** The requirements of this Permit as to insurance and acceptability to PSE of insurers and insurance to be maintained by US WEST are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by US WEST under this Permit.

US WEST (but not its successors or assigns unless specifically agreed by PSE in writing at the time of assignment) may satisfy all or a portion of its obligations under this Section 17 through a self-insurance program acceptable to PSE. US WEST shall provide a certificate and/or self-insurance letter, in each case duly executed by an authorized officer of US WEST, which (a) describes program coverages and limits and (b) commits US WEST's self-insurance program to cover any and all obligations in this Agreement.

**18. Assignment, Successors and Assigns.**

**18.1** US WEST shall not assign this Permit or any portion of its rights in this Permit, except as follows:

**18.1.1** to any person or entity that controls, is controlled by or under common control with US WEST (the "Acquiring Affiliate"); provided that US WEST gives PSE written notice of any such assignment or transfer and pays all amounts then outstanding and owing to PSE under this Permit; provided further that the Acquiring Affiliate certifies to PSE in writing (and provides such documents as may be requested by PSE to establish to PSE's reasonable satisfaction) that the Acquiring Affiliate (i) will assume all of the obligations of US WEST under this Permit, and (ii) is financially able to and will comply with all of the provisions of this Permit; and provided further that US WEST furnishes to PSE such information regarding the Equipment affected by such assignment or transfer as may reasonably be requested by PSE;

**18.1.2** to US WEST's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by US WEST, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of US WEST under this Permit; or

**18.1.3** to any other person or entity with the prior written consent of PSE.

**18.2** Except as specifically provided in paragraph 18.1, any assignment or apportionment, or purported assignment or apportionment of this Permit, whether it be express, by operation of law or otherwise, shall be voidable by PSE. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

**19. Casualty or Condemnation of the Site**

**19.1** If there is a casualty to any structure upon which the Equipment is located, PSE will use reasonable efforts to repair or restore the structure within sixty (60) days. Upon completion of such repair or restoration, US WEST will be entitled to reinstall the Equipment. In the event such repairs or restoration will, in PSE's reasonable estimation, require more than sixty (60) days to complete or if US WEST determines that the cost to reinstall its equipment is not feasible:

**19.1.1** US WEST or PSE will be entitled to terminate this Site Permit; or

**19.1.2** unless this Site Permit is terminated as provided in paragraph 19.1.1, US WEST may immediately install temporary Equipment, including any necessary supporting structure,

(a) at the Site, or

(b) at another unused portion of PSE's property adjacent to the Site, to the extent US WEST has the rights to do so,

while PSE makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with PSE's own restoration and operation of its facilities.

**19.2** If there is a condemnation of the Site, including without limitation a transfer of the Site by consensual deed in lieu of condemnation, then the Term will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Permit. US WEST may pursue a separate condemnation award for the Equipment and any relocation or other costs from the condemning authority provided that such award does not reduce the amount of PSE's award.

**20. Subordination.**

**20.1** US WEST agrees that this Permit is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against PSE's interest or estate therein, and any underlying ground lease or master lease on a particular Site, all without the necessity of having further instruments executed by US WEST to effect such subordination.

**20.2** This Permit is further subject to any and all restrictions or other terms or conditions contained in the underlying ground lease, master lease, easement, license, franchise, permit or other instrument of authorization or conveyance (an "Instrument") with respect to the Site. US WEST agrees to commit no act or omission which would constitute a violation of the terms and conditions of any Instrument for the Site insofar as PSE has provided a copy of such Instrument to US WEST or otherwise notified US WEST of the term or condition in question.

**20.3** PSE shall not be required to obtain any consent required under any Instrument from the landlord or other party to such Instrument for purposes of this Permit, unless hereafter agreed upon by PSE in writing.

**20.4** If a restriction contained in an Instrument for the Site prevents US WEST from installing, maintaining or operating the Equipment or accessing the Site, US WEST will be entitled to terminate the Term.

**20.5** Upon the termination or expiration of any Instrument with respect to the Site, the Term shall automatically terminate without liability to either Party. US WEST acknowledges that many of PSE's underlying Instruments grant to the property owner the right to terminate such Instruments, and that in the event of such termination, the Term shall terminate concurrently therewith without liability to either Party.

**20.6** Upon any sale or other transfer of all or any portion of the Site, the Term will automatically terminate except to the extent the purchaser or transferee and US WEST enter into an agreement for US WEST's continued use of the Site and release PSE from any further obligation or liability with respect to the Site. PSE shall request or attempt to obtain such agreement from the purchaser or transferee at the time of sale or transfer.

**20.7** PSE will not materially breach the terms or conditions of any Instrument with respect to a particular Site in a manner that causes US WEST to lose its use of the Site.

**21. Notices.** Any notice, request, approval, consent, instruction, direction or other communication given by either PSE or US WEST to the other under this Permit shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to:

If to PSE: Puget Sound Energy, Inc.  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734  
Attn: Real Estate Department/PCS Coordinator

If to US WEST: U S WEST Communications, Inc.  
c/o U S WEST Business Resources, Inc.  
188 Inverness Drive West, Suite 420  
Englewood, Colorado 80112  
Attn: PSL Manager/PCS Real Estate

with a copy to:  
U S WEST Communications Wireless Group  
405 110th Avenue NE, #209  
Bellevue, WA 98004  
Attn: Regional Real Estate Manager

Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this paragraph 21.



22. **No Partnership.** This Permit shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

23. **Attorneys' Fees.** The prevailing Party in any suit, action, or arbitration filed or held concerning this Permit shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

24. **Severability.** The invalidity or unenforceability of any provision of this Permit shall not affect the other provisions hereof, and this Permit shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. **Survival.** All provisions of this Permit which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of the Term or this Permit, shall survive the completion, termination or cancellation of the Term or this Permit.

26. **Headings.** The headings of sections and paragraphs of this Permit are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

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

28. **Force Majeure.** If a Party is delayed or hindered in, or prevented from performance required under this Permit (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of the such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

29. **Memorandum of Use.** Neither Party shall record this Permit or otherwise cause this Permit to be recorded. However, upon the request of either Party, the Parties shall execute, acknowledge, deliver and record a memorandum of use in form and content substantially the same as the attached Appendix 6. Upon termination of the Term for any reason, the Parties shall execute, acknowledge, deliver and record a termination document in form and content acceptable to PSE.

30. **Entire Agreement.** The rights and obligations of the Parties hereunder shall be subject to and governed by this Permit. This Permit sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the Equipment, the Work, the Site and other subject matter of this Permit. This Permit may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.

**31. Applicable Law.** This Permit shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington.

**32. Miscellaneous.** As conditions to approval of this Permit, the following also apply:

**32.1** US WEST shall provide complete detailed final construction drawings before construction begins for PSE's review and approval. Said drawings shall show in detail the following:

**32.1.1** Siting of fenced enclosure area to be located six (6) feet from PSE's West property line,

**32.1.2** Location of the telephone cable installation from source to the equipment cabinets,

**32.1.3** grounding design of the equipment and fencing, and

**32.1.4** US WEST acknowledges PSE's intention to relocate the West fence of the substation to a point lying 6 feet East of the West property line. US WEST shall accommodate access to their equipment by foot adjacent to the substation fence. No access to the substation yard is permitted without prior notification and escort by qualified PSE personnel. In the event vehicular access to the site is required, US WEST shall contact PSE and arrange for a PSE escort through the substation yard area.

**32.2** A list of materials and equipment provided to PSE in advance of construction for PSE's review and approval. Upon arrival, materials will be delivered to the site of a mutually acceptable location and accepted by PSE before construction commences.

**32.3** Due to drainage problems experienced at this site, US WEST, in addition to any additional wireless carrier located at this site, shall design and construct such drainage system as may be required by either the City of Mercer Island and/or PSE.

**For US WEST:**

**U S WEST Communications, Inc.**

James R. Bradley  
By: James R. Bradley  
Its: Attorney-in-Fact

**U S WEST Communications Wireless  
Group**

Michael J. ...

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

Its: FINANCE DIRECTOR

Date Signed: 9-11-97

**For PSE:**

**Puget Sound Energy, Inc.**

By: Howard A. Strong  
Howard A. Strong  
Manager Real Estate

Date Signed: SEPT 4, 1997

**LIST OF APPENDICES  
TO  
GENERAL CONDITIONS OF SITE PERMIT**

<u>Appendix</u>	<u>Title</u>
1	Site
2	Equipment
3	Site Development Plan
4	Annual Fees
5	Certificate of Insurance
6	Memorandum of Use

## APPENDIX 1

### Site

The site is known as a portion of PSE's South Mercer Substation located at 8477 Southeast 68th Street, Mercer Island, Washington. The proposed site consists construction a new 130 foot tall steel monopole and the installation of an antenna array located on top with radio equipment cabinets located on a fenced 9 1/5 foot by 12 foot concrete pad placed with the West edge of said equipment pad being 6 feet East of the West property line. The monopole and fenced equipment enclosure is being designed to accommodate one additional wireless communications carrier. PSE's South Mercer Substation is legally described as follows:

The South 150 feet of the North 180 feet of the East 1790 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., King County, Washington, EXCEPT the South 120 feet of the North 150 feet of the East 120 feet.

## **APPENDIX 2**

### **Equipment**

A list of material and equipment provided to PSE in advance of construction for PSE;s review and approval. Upon arrival, materials will be delivered to the site of a mutually acceptable location and accepted by PSE before construction commences.

**APPENDIX 3**

**Site Development Plan**

To be submitted by US WEST for review and approval by PSE

## APPENDIX 4

### Annual Fees

- It is understood that US WEST will secure such additional rights as needed for its facilities.
- Cost of utilities to service the permitted use to be borne by US WEST.
- Cost of new tower/structure for US WEST facilities to be borne by US WEST.

In accordance with the terms of the Master Agreement, the Annual Rental Rate for the Site is [REDACTED] prorated in the first year to the date of the Master Agreement (July 15). See Master Agreement for treatment of Escalation and Rent Adjustments.



**APPENDIX 5**

**Certificate of Insurance**

To be provided by US WEST prior to construction in accordance with Master Agreement

**APPENDIX 6**

**Memorandum of Use**

Attached, to be completed, executed and recorded upon execution of this permit.

FILED FOR RECORD AT THE REQUEST OF:  
Puget Sound Energy, Inc.  
Real Estate Department  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734



## MEMORANDUM OF USE

Reference #:

Grantor: Puget Sound Energy, Inc.

Grantee: US WEST Communications Inc.

Legal Description the SW, NW of Sec 30, Twn 24 N, Rng 5 E

Assessor's Property Tax Parcel:

This Memorandum of Use is dated this \_\_\_\_\_ day of September, 1997, by and between Puget Sound Energy, Inc., a Washington corporation ("Lessor") and US WEST Communications Wireless Group, a division of US WEST Communications Inc., a Colorado corporation ("Lessee").

Lessor and Lessee have entered into a Communications Site Permit ("Permit") dated \_\_\_\_\_, 1997, for the purpose of locating unmanned radio communications equipment and related facilities, which includes in part the following terms:

1. Permitted Premises. The real property demised by the Permit is a portion of that described in Exhibit A, attached hereto and incorporated herein by this reference.
2. Term of the Permit. The initial term of the Permit is for a twenty (20) year period commencing on \_\_\_\_\_ and shall automatically expire at midnight on \_\_\_\_\_.
3. Successors and Assigns. Subject to the restrictions on assignments and subletting by Lessee, the Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the respective parties.
4. Ratification of Permit. The parties by this Memorandum of Use intend to record a reference to the Permit and do hereby ratify and confirm all terms and conditions of the Permit and do hereby declare that Permitted Premises, located on a portion of the real property described on Exhibit A, is in all respects subject to all of the applicable provisions contained in the Permit.

Lessor  
Puget Sound Energy, Inc.

Lessee  
US WEST Communications Inc.

By: \_\_\_\_\_  
Manager Real Estate

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

STATE OF WASHINGTON)  
                                  ) SS  
COUNTY OF KING   )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared HOWARD A. STRONG to me known to be the person who signed as MANAGER REAL ESTATE of PUGET SOUND ENERGY, INC., the Corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument on behalf of said Corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for the State of Washington,  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON)  
                                  ) SS  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of US WEST Communications Inc. that executed the foregoing instrument and acknowledged the same to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT "A"**

The South 150 feet of the North 180 feet of the East 1790 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., King County, Washington, EXCEPT the South 120 feet of the North 150 feet of the East 120 feet.



**PERMIT FOR LOCATION OF FACILITIES  
(South Mercer Substation)**

This Permit, dated as of 9-11, 1997, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and US WEST Communications Wireless Group, a division of US WEST Communications Inc., a Colorado corporation ("US WEST"). PSE and US WEST are at times referred to herein where appropriate individually as a "Party" and collectively as the "Parties".

The Parties agree as follows:

1. **Permit.** For and in consideration of the mutual benefits to be derived therefrom, PSE hereby grants permission to US WEST, subject to the terms and conditions of this Permit, to use the real property described in the attached Appendix 1 (the "Site"). The rights and obligations of PSE and US WEST arising under this Permit will apply to and be binding upon their respective officers, employees, agents and representatives, and its suppliers and subcontractors of any tier acting on their behalf in connection with the performance of the Work (as defined below) or this Permit (collectively, the "Support"). Each party shall be solely responsible for the performance, nonperformance, acts and omissions of its Support.
2. **Use of the Site.** US WEST shall have the right to use the Site for the purpose of undertaking the following activities (the "Permitted Activities"):
  - 2.1 installation, operation and maintenance of the equipment specified in the attached Appendix 2 (the "Equipment") in accordance with the site development plan attached hereto as Appendix 3 (the "Site Development Plan") and all other provisions of this Permit; and
  - 2.2 performance of the installation, maintenance, repair, relocation, removal and other work specified in the Site Development Plan (collectively, the "Work") in accordance with the Site Development Plan and all other provisions of this Permit; and
  - 2.3 obtaining, at US WEST's sole cost and expense, telephone service from any utility company that provides such service to the Site, and arranging for the installation of a separate meter and main breaker, subject to PSE's right to approve the exact location of proposed utility routes and the manner of installation; and
  - 2.4 access to and from the Site for purposes of undertaking the activities specified in paragraphs 2.1, 2.2 and 2.3, in accordance with the following:
    - 2.4.1 access for construction, routine maintenance and repair and other non-emergency visits shall only be during normal business hours (defined as Monday through Friday, 8 am to 5 pm) unless otherwise agreed upon by the Parties;

2.4.2 in the event of emergency, US WEST may access the Site twenty-four (24) hours per day, seven days per week, by calling the PSE emergency telephone number set forth in paragraph 7 and requesting such access;

2.4.3 access to the Site may be by foot or motor vehicle, including trucks; and

2.4.4 access to the Site shall be subject to such reasonable conditions as may be imposed by PSE from time to time.

3. **Limitations on Use.** Except and only as specifically authorized in paragraph 2, US WEST shall not enter upon the Site or make any use thereof. Without limiting the generality of the foregoing:

3.1 US WEST shall, at all times, undertake the Permitted Activities in a manner so as to prevent bodily harm to persons (whomsoever) and damage to property (whatsoever). Precautionary measures shall include, without limitation, reasonable site security measures (e.g., fencing, signage, lighting, security guards, etc.) necessary to prevent access to the Site during such times as the Permitted Activities may cause the Site to be in an unsafe or unsecured condition.

3.2 US WEST shall, at all times, undertake the Permitted Activities in a manner that does not disturb or interfere in any way with the operations of PSE or any prior existing users of the Site, or otherwise in a manner that would impair the safe, continuous and reliable operation of PSE's utility systems or improvements. Without limiting the generality of the foregoing, US WEST shall at all times:

3.2.1 conduct the Permitted Activities so as to maintain legal and safe clearances from PSE's utility systems or improvements;

3.2.2 take all prudent precautions to ensure that no persons or property come into contact with PSE's utility systems or improvements; and

3.2.3 conduct the Permitted Activities so as to maintain access along and across the Site to PSE's utility systems and improvements, sufficient to allow the free passage of all equipment, vehicles, personnel and other items as may be necessary or convenient for the maintenance, repair and replacement of PSE's utility systems and improvements.

If, at any time, the Permitted Activities shall disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, US WEST shall immediately cease and discontinue such Permitted Activities. If US WEST anticipates that any Permitted Activity may disturb, interfere with or otherwise impair the safe, continuous and reliable operation of PSE's utility systems or improvements, US WEST shall request in writing, not less than fourteen (14) days in advance of the date required, that PSE take such action with respect to its systems or improvements as is necessary to accommodate such Permitted Activity. PSE may elect to accommodate such Permitted Activity in response to such request; provided, however: (a) all costs and expenses incurred by PSE thereby shall be reimbursed to PSE, and (b) PSE may refuse any or all such requests or may discontinue actions undertaken in response to such requests, as PSE, in its sole discretion, may choose. Prior to PSE incurring any cost or expense for which it will seek reimbursement from US WEST, PSE shall submit to US WEST a cost estimate and receive written authorization to proceed with the same.

**3.3** US WEST shall not undertake any activities and shall not use or permit any use of the Site that will in any way:

**3.3.1** be in noncompliance with, or otherwise conflict with, any applicable laws, regulations, ordinances, rules, orders or other requirements, now or hereafter in effect, of any governmental authority (all laws, regulations and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference);

**3.3.2** cause or constitute any nuisance, noxious odors, unsafe condition or waste in or about the Site;

**3.3.3** interfere with the rights or disturb the use and enjoyment of PSE, other users of the Site, or any other person lawfully on the Site;

**3.3.4** cause a cancellation, increase the premiums for or deductibles under or otherwise affect any fire, casualty, property, liability or other insurance covering the Site, any activities conducted upon or from the Site, or any accident, act, error, omission, fault, negligence or strict liability occurring on or about the Site; or

**3.3.5** cause or allow the generation, storage, processing, handling, transport, spill, disposal or release of any dangerous, hazardous or extremely hazardous material, waste or substance at, upon or in any way affecting the Site (including, but not limited to, any such materials, waste or substances subject to regulation by any federal, state or local law pertaining to the protection of human health or the environment).

**3.4** US WEST shall not, and shall not permit others to, install, store, maintain or operate any equipment, fixtures, improvements, supplies, vehicles or other items on the Site except for the Equipment (which Equipment shall be installed, maintained and operated at US WEST's sole cost, risk and expense).

**3.5** US WEST shall obtain and comply (and shall ensure that all of US WEST's Support comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to undertake any Permitted Activity. US WEST shall furnish to PSE such evidence thereof as PSE may request.

**3.6** If, in the reasonable opinion of PSE, the Equipment or any Permitted Activity violates, jeopardizes or unreasonably interferes with: (a) any laws, regulations, rules, orders or other regulatory authorizations, permits or approvals that may concern PSE's present or future use and enjoyment of the Site, or (b) any proprietary rights such as any contract, permit, license, franchise, right-of-way, easement or other rights of PSE, and US WEST fails to correct the problem within thirty (30) days after written notice from PSE (or such shorter or longer period of time as is expressly required or permitted under the applicable law, regulatory authorization, permit or approval or applicable proprietary right of PSE), PSE may require that US WEST immediately remove any or all Equipment from and cease any Permitted Activity at the Site. If US WEST fails to remove any Equipment within fifteen (15) days after PSE makes its request, PSE may remove the Equipment at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.



**3.7** US WEST shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Permitted Activities. US WEST shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at US WEST's expense and US WEST shall reimburse PSE for the entire expense thereby incurred. US WEST may contest the validity of any such lien provided that US WEST delivers a bond to PSE in the amount of the contested lien.

**3.8** In undertaking the Permitted Activities, US WEST shall comply and shall ensure that all of its Support comply with all applicable industry standards and codes, and all of PSE's standard practices, specifications, rules and regulations provided by PSE to US WEST on request. US WEST shall furnish such documents as may be reasonably required to effect or evidence such compliance.

**3.9** US WEST shall comply with the following in connection with its performance of the Work:

**3.9.1** US WEST shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. US WEST shall expeditiously and efficiently perform the Work in accordance with the Site Development Plan and the provisions of this Permit. US WEST shall not independently hire any PSE employee to perform any of the Work (e.g., other than in the course of his or her employment with PSE with respect to Work that PSE agrees to perform for US WEST).

**3.9.2** US WEST shall perform the Work in a workmanlike and skillful manner. US WEST shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such reasonable requirements and specifications as PSE shall from time to time prescribe and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to the construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.

**3.9.3** US WEST shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Permit. If US WEST fails or refuses to perform any Work required by this Permit or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

**3.9.4** Installation of the Equipment or the performance of other Work shall not adversely affect the structural integrity, maintenance or marketability of the Site or any structure or improvement on or surrounding the Site.

**3.9.5** US WEST shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. US WEST shall, if so requested by PSE, remove from performance of the Work any personnel (including, without limitation, any Support) whom PSE finds to be incompetent, careless or otherwise unsafe.

**3.9.6** US WEST hereby acknowledges that PSE employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between PSE and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Permit, US WEST will cooperate with PSE and take such action as may be reasonably requested by PSE to fully and expeditiously resolve such dispute.

**3.9.7** US WEST shall, at all times, keep the Site cleared of rubbish, refuse and other debris generated by US WEST or its Support and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, US WEST shall promptly remove all rubbish, refuse and other debris generated by US WEST or its Support and all of its Equipment and surplus materials.

**3.9.8** The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to inspection and testing by PSE. US WEST may, at its option, have a representative present at the Site during any such inspection or testing by PSE. If, in PSE's reasonable judgment, the performance of any Work requires one or more representatives of PSE to be present at the Site during the performance of such Work, then US WEST will reimburse PSE for any and all reasonable costs and expenses thereby incurred by PSE. US WEST shall not be responsible of any cost or expense incurred by PSE or its agents unless US WEST has received a written estimate of the cost and expense in advance and US WEST has authorized the same in writing. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or non-compliance by PSE shall relieve US WEST of any of its obligations under this Permit.

**3.9.9** US WEST shall promptly settle or resolve all complaints received by US WEST from third Parties arising out of or in connection with performance of the Work. US WEST shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, US WEST shall use its best efforts to maintain and promote good public relations for PSE.

**3.9.10** US WEST acknowledges and anticipates that due to electrical service demands or emergency conditions, the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. US WEST shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

**3.9.11** If any part of the Work depends upon the results of other work by PSE or others, US WEST shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that render it unsuitable for performance of the Work. Failure of US WEST to so notify PSE shall constitute an acceptance by US WEST of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

**3.10** Upon completion of Permitted Activities which may disturb the surface or subsurface of the Site (or any improvements thereon), US WEST shall restore the Site (and any improvements thereon) to the condition that existed prior to such disturbance, reasonable wear and tear excepted.

**3.11** If, in undertaking Permitted Activities (or activities off-Site in furtherance of Permitted Activities), US WEST shall cause significant public concern with or opposition to its proposed use of the Site, and PSE shall reasonably conclude that such public concern or opposition will materially interfere with its use of the Site or otherwise with the conduct of PSE's business, then PSE may direct US WEST to mitigate to the extent necessary such acts (or omissions) giving rise to such public opposition or concern.

**3.12** US WEST shall copy PSE's Director of Planning & Work Practices on all notices and other correspondence received or given by US WEST in connection with any local jurisdiction review process involving any Permitted Activities undertaken or proposed to be undertaken by US WEST at the Site.

#### **4. Equipment, Structures and Facilities**

**4.1** US WEST shall maintain all Equipment on the Site in good and safe condition and in a manner that does not materially affect the structural integrity of any structure on the Site. If US WEST fails to do any maintenance within thirty (30) days after receipt of notice from PSE requesting such maintenance, then PSE may, at its option, do such maintenance at US WEST's expense and US WEST shall reimburse PSE for the entire expense thereby incurred. If US WEST commences the requested maintenance within thirty (30) days after any written notice from PSE requesting such maintenance and thereafter continuously and diligently pursues and completes such maintenance, then the thirty (30) day cure period will extend for an additional sixty (60) days to permit US WEST to complete the requested maintenance.

**4.2** PSE shall at all times during the Term of this Permit, at PSE's sole cost and expense, maintain any PSE-owned structures used by US WEST for Permitted Activities in a structurally good and safe condition. If US WEST is unable to use such structure due to PSE's maintenance activities, US WEST may immediately install temporary Equipment on any alternate location specified in the Site Development Plan while PSE makes repairs to the Site.

**4.3** If PSE at any time relocates, replaces or removes any pole, tower or other facility or structure on which any Equipment is attached, or PSE otherwise determines in its reasonable judgment that any Equipment must be removed or relocated to accommodate PSE's use of or activities on the Site, then US WEST shall, at its sole cost and expense, remove or relocate such Equipment at such times and in the manner directed by PSE. If US WEST fails to remove or relocate its Equipment within one hundred eighty (180) days (or such shorter period of time as PSE may reasonably require under the circumstances) after being directed to do so by PSE, PSE may remove or relocate the Equipment at US WEST's sole risk and expense, and US WEST shall reimburse PSE for the entire expenses thereby incurred.

**4.4** In the event US WEST is permitted to and does install any pole, tower or other structure as part of the Equipment on the Site, PSE shall have the right, subject to such reasonable rules and requirements as the parties may agree upon in writing, to install one or more items of equipment on such pole, tower or other structure for PSE's internal purposes only, provided that the pole, tower or structure in question is structurally capable of bearing the weight of PSE's equipment. Such installation and use shall be at PSE's cost and expense, but US WEST shall not levy any charge or fee for PSE's use thereof.

5. **Nonexclusivity.** This Permit is nonexclusive, and PSE may grant rights to others to use the Site for any purpose not inconsistent with US WEST's rights hereunder, including competing telecommunications companies. PSE does not warrant title to the Site and shall not be liable for defects thereto or failure thereof. Without limiting any other provision of this Permit, US WEST will promptly resolve technical interference problems with other radio communications equipment located at the Site on the date of this Permit or any radio communications equipment located at the Site on any future date when US WEST modifies or supplements its Equipment at the Site. PSE shall not permit any subsequent use to the site to install or operate its communication equipment in a manner that will interfere with US WEST's use and enjoyment of the site.

6. **Cooperation of PSE.** PSE shall, at US WEST's expense, support US WEST's efforts to secure any documents or applications required (i.e., by virtue of PSE's ownership of or rights in the Site) to be obtained by US WEST from any governmental agency with jurisdiction in order for US WEST to obtain the necessary licenses, permits or other approvals from such governmental agency for the Permitted Activities; provided, however, that PSE shall not under any circumstances be obligated to execute any application or other document that, in PSE's sole judgment, will in any way impair, limit or adversely affect PSE's rights in or ownership or use of the Site, nor shall PSE be obligated to provide such support if the same requires a commitment of resources of any kind of a value in excess of five hundred dollars (\$500.00).

7. **Emergencies.** In the event of an emergency relating to the Equipment or the Site, US WEST shall immediately correct any safety or use problems, even if full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

PSE: [REDACTED]

US WEST: [REDACTED]

Each Party shall promptly notify the other of any change in such party's emergency phone number.

8. **Ownership and Risk of Loss of Equipment.**

8.1 The Equipment located at the Site pursuant to the terms of this Permit will at all times be and remain the property of US WEST and will not be subject to any lien or encumbrance created or suffered by PSE. US WEST has the right to make such filings with the Washington State Department of Licensing (e.g., UCC-1 Financing Statement) as it deems necessary or desirable to evidence its ownership of the Equipment. Notwithstanding the foregoing, if, upon termination or expiration of the Term, the Equipment is not removed from the Site and the Site restored according to the terms of this Permit, such Equipment shall be deemed abandoned thirty (30) days following such termination or expiration and PSE's waiver of lien shall thereafter be void and of no further force and effect.

8.2 US WEST shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work.

9. **Examination of Records.** US WEST shall promptly furnish PSE with such non-confidential information related to the Work or the Equipment as may from time to time be reasonably requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have reasonable access to and the right to examine all of US WEST's non-confidential books, documents, papers and records which are related to the Work, the Equipment or this Permit.

10. **Compensation.**

10.1 The "Annual Fee" shall mean the annual fee for US WEST's use of the Site as calculated in accordance with the schedule set forth in the attached Appendix 4 and the following:

10.1.1 the Annual Fee will be payable on or before the date of this Permit and thereafter on the first day of the first month following each anniversary of the commencement date of the Master Agreement, and

10.1.2 the Annual Fee will be prorated in the first and last year of this Permit to coincide with the anniversary of the commencement date of the Master Agreement, except that the Annual Fee for the Site will continue past any termination of the Term of this Permit if and until all of the Equipment is removed from the Site and restoration of the Site has occurred according to the provisions of this Permit.

10.2 PSE shall invoice US WEST for all amounts payable by US WEST to PSE under this Permit (including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) as they become due. US WEST shall pay each such invoice in full within thirty (30) days after US WEST's receipt thereof.

10.3 US WEST acknowledges that late payment of any fee or other amounts due to PSE under this Permit will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Permit, the exact amount of which will be extremely difficult, if not impossible, to ascertain.

10.4 US WEST shall pay to PSE interest, compounded daily, at the rate of [REDACTED] per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Permit, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Permit by US WEST.

11. **Taxes.** US WEST shall pay (except as otherwise required by law) all fees and taxes applicable to or incurred in connection with the Work, the Equipment or the system of which the Equipment constitutes a part. Subject to the foregoing, PSE shall pay all taxes and other fees or charges attributable to each Site (including, without limitation, debt and ground lease obligations).

12. **Site Acceptance.**

12.1 US WEST will be deemed to have accepted the Site upon execution of this Site Permit. Conducting feasibility and cost assessments or other preliminary inspections on the Site prior to execution of this Site Permit shall not be deemed to be acceptance.

**12.2** Acceptance of the Site by US WEST in accordance with paragraph 12.1 shall be conclusive evidence that US WEST:

**12.2.1** accepts the Site and any structure on the Site and every part and appurtenance thereof "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS"; and

**12.2.2** releases, and waives all claims against, PSE in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes, except as expressly provided otherwise in this Agreement.

**12.3** PSE does not warrant the suitability of the Site for the purposes for which US WEST may desire to use it (including, without limitation, the Permitted Activities); nor does PSE warrant the adequacy of the Site's location, its condition nor the condition of any structure or appurtenances for any purpose. US WEST acknowledges that, in accepting the Site (and any and all structures thereon used by US WEST for Permitted Activities) in its "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS" condition, PSE makes no representations or warranties whatsoever concerning the Site and/or such structures, or any aspect of their status or condition, and that US WEST is not in any way relying on information disclosed by PSE with respect thereto, or otherwise in PSE's possession with respect thereto; rather, US WEST is solely relying on its own inspections and assessments with respect to the condition or status of the Site and/or such structures.

### **13. Term and Termination.**

**13.1** The term of this Permit (the "Term") will commence on the date of this Permit and, unless earlier terminated as provided elsewhere in this Permit, will end on upon expiration of Master Agreement.

**13.2** The Term will terminate automatically upon the first of the following to occur:

**13.2.1** the term of the Master Agreement at any time expires or is terminated for any reason;

**13.2.2** any certificate, permit, license or approval affecting US WEST's ability to use the Site in the manner originally intended by US WEST is finally rejected; or

**13.2.3** any previously issued certificate, permit, license or approval affecting US WEST's ability to use the Site is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental agency.

**13.3** PSE may at any time terminate the Term and all of US WEST's rights to use the Site upon:

**13.3.1** one hundred twenty (120) days' prior written notice to US WEST if any Permitted Activity unreasonably interferes with (a) PSE's or any other prior existing user's use of the Site, or (b) access to or around the Site or any structure adjacent to the Site by PSE or any other prior existing users of PSE's property on or adjacent to the Site, however PSE agrees not to

terminate in accordance with this paragraph 13.3.1 within 5 (five) years of the date of this site permit, or

**13.3.2** the occurrence of any Event of Default.

**13.4** US WEST may terminate the Term upon one hundred twenty (120) days' prior written notice to PSE if US WEST is unable (e.g., for technological reasons) to use the Site for the Permitted Activities, however US WEST agrees not to terminate in accordance with this paragraph 13.4 within 5 (five) years of the date of this site permit.

**14. Default.**

**14.1** The occurrence of any one or more of the following events constitutes an "Event of Default" by US WEST under this Permit:

**14.1.1** US WEST undertakes any activities on the Site other than the Permitted Activities;

**14.1.2** US WEST fails to pay when due the full amount of any fee or other payment under this Permit, where such failure continues for fifteen (15) days after written notice thereof by PSE to US WEST;

**14.1.3** US WEST fails to cure any other default under or breach of any provision of this Permit (i.e., other than a default or breach covered by paragraph 11.1.1) within thirty (30) days after PSE gives US WEST written notice of such default or breach; except such thirty (30) day cure period will be extended as reasonably necessary to permit US WEST to complete cure so long as US WEST commences cure within the thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure;

**14.1.4** two (2) or more defaults by US WEST in the payment of any fee or other payments under the Permit which would allow PSE to issue a notice of default in any twelve (12) month period, which such occurrence will constitute a noncurable material default and breach of this Permit;

**14.1.5** US WEST deserts, abandons, or vacates any portion of a Site and fails to maintain any and all Equipment remaining at the Site.

**14.2** If an Event of Default occurs, PSE (without notice or demand except as expressly required above) may, in addition to any other right or remedy to which PSE may be entitled under this Permit or applicable law, recover from US WEST an amount equal to the sum of the following:

**14.2.1** the actual costs of removing the Equipment and restoring the Site to its original condition;

**14.2.2** the Annual Fees for the Site until such time as the Site is restored to its original condition, plus interest thereon from the date due until paid according to the terms of this Permit; and

14.2.3 all other sums of money and damages to which PSE may be entitled hereunder or under applicable law.

15. **Effect of Termination.** Within thirty (30) days after termination of the Term, US WEST shall remove all Equipment from the Site and restore the Site to its original condition except for reasonable use, wear and tear. US WEST will repair any damage to the Site caused during the removal of the Equipment. Following expiration of the above thirty (30) day period, PSE shall furnish to US WEST a list of any removal, restoration, repair or other work that remains to be completed at the Site. US WEST will thereafter complete the work specified on the list within ten (10) days after receipt of the list from PSE. If US WEST shall fail to complete the specified work within the ten (10) day period, PSE may complete the work, or have the work completed through the most expeditious means available, at US WEST's sole risk and expense and US WEST shall reimburse PSE for the entire expense thereby incurred.

16. **Release, Indemnity, Hold Harmless and Limitation of Liability.**

16.1 US WEST releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with the conduct of the Permitted Activities (including, without limitation, the location of any Equipment at the Site, the performance of the Work, or the operation of the Equipment or the system of which the Equipment is a part), the enforcement of this Permit by PSE, any default under or breach of this Permit by US WEST or the acts or omissions of US WEST or any of its Support, its directors, officers, employees and agents or anyone acting on US WEST's behalf in connection with this Permit. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that US WEST shall not be required to so indemnify any Indemnitee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence or willful misconduct of any Indemnitee(s). In connection with any action to enforce this paragraph 16.1, US WEST waives any immunity, defense, or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit the Equipment on the Site for the fees described in this Permit only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity and hold harmless shall be construed broadly in favor of the Indemnitees.

16.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, PSE SHALL NOT HAVE ANY LIABILITY TO US WEST FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF US WEST FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

16.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PERMIT, US WEST SHALL NOT HAVE ANY LIABILITY TO PSE FOR ANY LOSS OF PROFIT OR REVENUE,



CLAIMS OF CUSTOMERS OF PSE FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE, OR THIS PERMIT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF US WEST HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

**17. Worker's Compensation, Insurance and Bonds.**

**17.1** US WEST shall ensure that US WEST and all persons undertaking any Permitted Activities, including without limitation US WEST's Support, maintain in effect at all times, coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. US WEST shall furnish to PSE such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as PSE may request.

**17.2** US WEST shall secure and maintain in effect at all times during the Term the following insurance:

**17.2.1** fire insurance, with endorsements for extended coverage vandalism, and malicious mischief, on the Site, in an amount not less than [REDACTED] of the full replacement cost of the Site (including, without limitation, all equipment and facilities located thereon); and

**17.2.2** Commercial General Liability Coverage, including personal injury, bodily injury, property damage, operations hazard, independent contractor coverage, contractual liability, products and completed operations liability and stop gap coverage, in limits not less than five million dollars (\$5,000,000) for each occurrence (combined single limit) with US WEST named as insured therein and PSE named as an additional insured therein as their respective interests may appear.

**17.3** All required insurance policies must be taken out with reputable national insurers that are licensed to do business in the jurisdiction where the Site is located. US WEST will deliver to PSE a Certificate of Insurance in the form attached to this Permit as Appendix 5 prior to commencement of performance of any of the Work. All policies must contain an undertaking by the insurers to notify PSE in writing not less than fifteen (15) days before any material change, reduction in coverage, cancellation or termination of the insurance. US WEST and PSE will each year review the limits for the insurance policies required by this Permit. Policy limits will be adjusted to proper and reasonable limits as circumstances warrant, but policy limits will not be reduced below those stated in paragraph 17.2 and no increases in the policy limits will be effective unless US WEST and PSE mutually agree.

**17.4** US WEST shall also furnish PSE with such additional assurance and evidence of such insurance (such as copies of all insurance policies) as PSE may from time to time reasonably request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of

insurance required under this Permit, US WEST shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.

**17.5** US WEST shall ensure that any policies of insurance that US WEST or any of its Support carry as insurance against property damage or against liability for personal injury (including death) or property damage shall include a provision therein providing a waiver of the insurer's right to subrogation against the Indemnitees. To the extent permitted by its insurance policies, US WEST hereby waives all rights of subrogation against the Indemnities.

**17.6** All insurance carried by US WEST or any of its Support shall be primary insurance with respect to the interests of PSE, and any insurance or self-insurance maintained by PSE is in excess and not contributory insurance with the insurance required hereunder.

**17.7** The requirements of this Permit as to insurance and acceptability to PSE of insurers and insurance to be maintained by US WEST are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by US WEST under this Permit.

US WEST (but not its successors or assigns unless specifically agreed by PSE in writing at the time of assignment) may satisfy all or a portion of its obligations under this Section 17 through a self-insurance program acceptable to PSE. US WEST shall provide a certificate and/or self-insurance letter, in each case duly executed by an authorized officer of US WEST, which (a) describes program coverages and limits and (b) commits US WEST's self-insurance program to cover any and all obligations in this Agreement.

## **18. Assignment, Successors and Assigns.**

**18.1** US WEST shall not assign this Permit or any portion of its rights in this Permit, except as follows:

**18.1.1** to any person or entity that controls, is controlled by or under common control with US WEST (the "Acquiring Affiliate"); provided that US WEST gives PSE written notice of any such assignment or transfer and pays all amounts then outstanding and owing to PSE under this Permit; provided further that the Acquiring Affiliate certifies to PSE in writing (and provides such documents as may be requested by PSE to establish to PSE's reasonable satisfaction) that the Acquiring Affiliate (i) will assume all of the obligations of US WEST under this Permit, and (ii) is financially able to and will comply with all of the provisions of this Permit; and provided further that US WEST furnishes to PSE such information regarding the Equipment affected by such assignment or transfer as may reasonably be requested by PSE;

**18.1.2** to US WEST's lender(s) for security purposes in connection with the financing and refinancing, from time to time, by US WEST, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of US WEST under this Permit; or

**18.1.3** to any other person or entity with the prior written consent of PSE.

**18.2** Except as specifically provided in paragraph 18.1, any assignment or apportionment, or purported assignment or apportionment of this Permit, whether it be express, by operation of law or otherwise, shall be voidable by PSE. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

**19. Casualty or Condemnation of the Site**

**19.1** If there is a casualty to any structure upon which the Equipment is located, PSE will use reasonable efforts to repair or restore the structure within sixty (60) days. Upon completion of such repair or restoration, US WEST will be entitled to reinstall the Equipment. In the event such repairs or restoration will, in PSE's reasonable estimation, require more than sixty (60) days to complete or if US WEST determines that the cost to reinstall its equipment is not feasible:

**19.1.1** US WEST or PSE will be entitled to terminate this Site Permit; or

**19.1.2** unless this Site Permit is terminated as provided in paragraph 19.1.1, US WEST may immediately install temporary Equipment, including any necessary supporting structure,

(a) at the Site, or

(b) at another unused portion of PSE's property adjacent to the Site, to the extent US WEST has the rights to do so,

while PSE makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with PSE's own restoration and operation of its facilities.

**19.2** If there is a condemnation of the Site, including without limitation a transfer of the Site by consensual deed in lieu of condemnation, then the Term will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Permit. US WEST may pursue a separate condemnation award for the Equipment and any relocation or other costs from the condemning authority provided that such award does not reduce the amount of PSE's award.

**20. Subordination.**

**20.1** US WEST agrees that this Permit is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against PSE's interest or estate therein, and any underlying ground lease or master lease on a particular Site, all without the necessity of having further instruments executed by US WEST to effect such subordination.

**20.2** This Permit is further subject to any and all restrictions or other terms or conditions contained in the underlying ground lease, master lease, easement, license, franchise, permit or other instrument of authorization or conveyance (an "Instrument") with respect to the Site. US WEST agrees to commit no act or omission which would constitute a violation of the terms and conditions of any Instrument for the Site insofar as PSE has provided a copy of such Instrument to US WEST or otherwise notified US WEST of the term or condition in question.

**20.3** PSE shall not be required to obtain any consent required under any Instrument from the landlord or other party to such Instrument for purposes of this Permit, unless hereafter agreed upon by PSE in writing.

**20.4** If a restriction contained in an Instrument for the Site prevents US WEST from installing, maintaining or operating the Equipment or accessing the Site, US WEST will be entitled to terminate the Term.

**20.5** Upon the termination or expiration of any Instrument with respect to the Site, the Term shall automatically terminate without liability to either Party. US WEST acknowledges that many of PSE's underlying Instruments grant to the property owner the right to terminate such Instruments, and that in the event of such termination, the Term shall terminate concurrently therewith without liability to either Party.

**20.6** Upon any sale or other transfer of all or any portion of the Site, the Term will automatically terminate except to the extent the purchaser or transferee and US WEST enter into an agreement for US WEST's continued use of the Site and release PSE from any further obligation or liability with respect to the Site. PSE shall request or attempt to obtain such agreement from the purchaser or transferee at the time of sale or transfer.

**20.7** PSE will not materially breach the terms or conditions of any Instrument with respect to a particular Site in a manner that causes US WEST to lose its use of the Site.

**21. Notices.** Any notice, request, approval, consent, instruction, direction or other communication given by either PSE or US WEST to the other under this Permit shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to:

If to PSE: Puget Sound Energy, Inc.  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734  
Attn: Real Estate Department/PCS Coordinator

If to US WEST: U S WEST Communications, Inc.  
c/o U S WEST Business Resources, Inc.  
188 Inverness Drive West, Suite 420  
Englewood, Colorado 80112  
Attn: PSL Manager/PCS Real Estate

with a copy to:  
U S WEST Communications Wireless Group  
405 110th Avenue NE, #209  
Bellevue, WA 98004  
Attn: Regional Real Estate Manager

Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this paragraph 21.

22. **No Partnership.** This Permit shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

23. **Attorneys' Fees.** The prevailing Party in any suit, action, or arbitration filed or held concerning this Permit shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

24. **Severability.** The invalidity or unenforceability of any provision of this Permit shall not affect the other provisions hereof, and this Permit shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. **Survival.** All provisions of this Permit which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of the Term or this Permit, shall survive the completion, termination or cancellation of the Term or this Permit.

26. **Headings.** The headings of sections and paragraphs of this Permit are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

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

28. **Force Majeure.** If a Party is delayed or hindered in, or prevented from performance required under this Permit (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Permit) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of the such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

29. **Memorandum of Use.** Neither Party shall record this Permit or otherwise cause this Permit to be recorded. However, upon the request of either Party, the Parties shall execute, acknowledge, deliver and record a memorandum of use in form and content substantially the same as the attached Appendix 6. Upon termination of the Term for any reason, the Parties shall execute, acknowledge, deliver and record a termination document in form and content acceptable to PSE.

30. **Entire Agreement.** The rights and obligations of the Parties hereunder shall be subject to and governed by this Permit. This Permit sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the Equipment, the Work, the Site and other subject matter of this Permit. This Permit may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.

31. **Applicable Law.** This Permit shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington.

32. **Miscellaneous.** As conditions to approval of this Permit, the following also apply:

32.1 US WEST shall provide complete detailed final construction drawings before construction begins for PSE's review and approval. Said drawings shall show in detail the following:

32.1.1 Siting of fenced enclosure area to be located six (6) feet from PSE's West property line,

32.1.2 Location of the telephone cable installation from source to the equipment cabinets,

32.1.3 grounding design of the equipment and fencing, and

32.1.4 US WEST acknowledges PSE's intention to relocate the West fence of the substation to a point lying 6 feet East of the West property line. US WEST shall accommodate access to their equipment by foot adjacent to the substation fence. No access to the substation yard is permitted without prior notification and escort by qualified PSE personnel. In the event vehicular access to the site is required, US WEST shall contact PSE and arrange for a PSE escort through the substation yard area.

32.2 A list of materials and equipment provided to PSE in advance of construction for PSE's review and approval. Upon arrival, materials will be delivered to the site of a mutually acceptable location and accepted by PSE before construction commences.

32.3 Due to drainage problems experienced at this site, US WEST, in addition to any additional wireless carrier located at this site, shall design and construct such drainage system as may be required by either the City of Mercer Island and/or PSE.

**For US WEST:**

**U S WEST Communications, Inc.**

James R. Bradley  
By: James R. Bradley  
Its: Attorney-in-Fact

**U S WEST Communications Wireless  
Group**

Michael J. ...  
By: \_\_\_\_\_  
Its: FINANCE DIRECTOR  
Date Signed: 9-11-97

**For PSE:**

**Puget Sound Energy, Inc.**

By: Howard A. Strong  
Howard A. Strong  
Manager Real Estate

Date Signed: SEPT 4, 1997

**LIST OF APPENDICES  
TO  
GENERAL CONDITIONS OF SITE PERMIT**

<u>Appendix</u>	<u>Title</u>
1	Site
2	Equipment
3	Site Development Plan
4	Annual Fees
5	Certificate of Insurance
6	Memorandum of Use



## APPENDIX 1

### Site

The site is known as a portion of PSE's South Mercer Substation located at 8477 Southeast 68th Street, Mercer Island, Washington. The proposed site consists construction a new 130 foot tall steel monopole and the installation of an antenna array located on top with radio equipment cabinets located on a fenced 9 1/5 foot by 12 foot concrete pad placed with the West edge of said equipment pad being 6 feet East of the West property line. The monopole and fenced equipment enclosure is being designed to accommodate one additional wireless communications carrier. PSE's South Mercer Substation is legally described as follows:

The South 150 feet of the North 180 feet of the East 1790 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., King County, Washington, EXCEPT the South 120 feet of the North 150 feet of the East 120 feet.

## **APPENDIX 2**

### **Equipment**

A list of material and equipment provided to PSE in advance of construction for PSE;s review and approval. Upon arrival, materials will be delivered to the site of a mutually acceptable location and accepted by PSE before construction commences.

**APPENDIX 3**

**Site Development Plan**

To be submitted by US WEST for review and approval by PSE

## **APPENDIX 4**

### **Annual Fees**

- It is understood that US WEST will secure such additional rights as needed for its facilities.
- Cost of utilities to service the permitted use to be borne by US WEST.
- Cost of new tower/structure for US WEST facilities to be borne by US WEST.

In accordance with the terms of the Master Agreement, the Annual Rental Rate for the Site is [REDACTED] prorated in the first year to the date of the Master Agreement (July 15). See Master Agreement for treatment of Escalation and Rent Adjustments.

**APPENDIX 5**

**Certificate of Insurance**

To be provided by US WEST prior to construction in accordance with Master Agreement

**APPENDIX 6**

**Memorandum of Use**

Attached, to be completed, executed and recorded upon execution of this permit.

FILED FOR RECORD AT THE REQUEST OF:  
Puget Sound Energy, Inc.  
Real Estate Department  
P.O. Box 97034 OBC-11N  
Bellevue, WA 98009-9734



## MEMORANDUM OF USE

Reference #:

Grantor: Puget Sound Energy, Inc.

Grantee: US WEST Communications Inc.

Legal Description the SW, NW of Sec 30, Twn 24 N, Rng 5 E

Assessor's Property Tax Parcel:

This Memorandum of Use is dated this \_\_\_\_\_ day of September, 1997, by and between Puget Sound Energy, Inc., a Washington corporation ("Lessor") and US WEST Communications Wireless Group, a division of US WEST Communications Inc., a Colorado corporation ("Lessee").

Lessor and Lessee have entered into a Communications Site Permit ("Permit") dated \_\_\_\_\_, 1997, for the purpose of locating unmanned radio communications equipment and related facilities, which includes in part the following terms:

1. Permitted Premises. The real property demised by the Permit is a portion of that described in Exhibit A, attached hereto and incorporated herein by this reference.
2. Term of the Permit. The initial term of the Permit is for a twenty (20) year period commencing on \_\_\_\_\_ and shall automatically expire at midnight on \_\_\_\_\_.
3. Successors and Assigns. Subject to the restrictions on assignments and subletting by Lessee, the Permit shall be fully binding upon, inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the respective parties.
4. Ratification of Permit. The parties by this Memorandum of Use intend to record a reference to the Permit and do hereby ratify and confirm all terms and conditions of the Permit and do hereby declare that Permitted Premises, located on a portion of the real property described on Exhibit A, is in all respects subject to all of the applicable provisions contained in the Permit.

Lessor  
Puget Sound Energy, Inc.

Lessee  
US WEST Communications Inc.

By: \_\_\_\_\_  
Manager Real Estate

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





**EXHIBIT "A"**

The South 150 feet of the North 180 feet of the East 1790 feet of the West half of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., King County, Washington, EXCEPT the South 120 feet of the North 150 feet of the East 120 feet.