

**AIRSPACE LEASE FOR COMMUNICATION FACILITIES**  
**(Ground Rental Only)**

This LEASE FOR COMMUNICATION FACILITY (hereinafter Lease) is made this 6<sup>th</sup> day of MARCH, 2003, between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT), acting in the capacity of landlord, and AT&T WIRELESS SERVICES of Washington, LLC, an Oregon limited liability company d/b/a AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation, its member (TENANT).

WHEREAS, WSDOT owns real property depicted on **Exhibit A**, attached hereto and by this reference made a part hereof, for which the use of a part of said real property for wireless communication purposes has been determined to be compatible with highway operation and maintenance; and

WHEREAS, the property to be leased to the TENANT pursuant to this Lease is a portion of the real property shown on **Exhibit A**, attached hereto; and

WHEREAS, the premises to be leased by the TENANT are not presently needed for highway purposes; and

WHEREAS, WSDOT is granted authority to lease the real property under RCW 47.12.120; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Premises** WSDOT is the owner of property located in the I-90 right of way in the County of King, State of Washington. A portion of the right of way is depicted in **Exhibit A** attached hereto. WSDOT hereby leases to TENANT and TENANT hereby leases from WSDOT, that portion of the right of way shown hachured on **Exhibit A**, attached hereto, and as more particularly described in **Exhibit B**, attached hereto and by this reference made a part hereof (Premises), together with the access rights as described in **paragraph 5** herein.

2. **Permitted Use.** The Premises may be used by TENANT only for the installation, operation, maintenance, upgrading and removal of unstaffed personal communications equipment and related telecommunications activities for which TENANT is legally authorized to provide (Communications Facility). TENANT shall not use the Premises for any other purposes without the prior written consent of WSDOT. The Communication Facility on the Premises shall consist of those items shown on **Exhibit C**, attached hereto and by this reference made a part hereof.

3. **Utility Improvements.**

A. TENANT shall comply with the WSDOT Utilities Manual and Accommodation Policy set forth at Ch. 468-34 WAC, and any amendments thereto.

B. TENANT shall assure that all necessary Franchises and Permits are obtained from WSDOT and maintained for the duration of this lease prior to accessing the premises and shall comply with all terms and conditions contained therein..

4. **Traffic Control.** At all times during the term of this Lease, TENANT shall adhere to the Traffic Control Plan attached hereto as **Exhibit D** and by this reference made a part hereof.

5. **Access.**

A. TENANT shall obtain and maintain the appropriate permit prior to accessing the Premises and shall comply with the terms and conditions contained therein.

B. TENANT's Access to the Premises shall be at the location(s) indicated on the Access Plan attached hereto as **Exhibit E** and by this reference made a part hereof.

C. TENANT may access the Premises at the locations indicated on the attached Access Plan twenty-four (24) hours a day, seven (7) days a week for maintenance and operation of TENANT's Communication Facility. In the event of an emergency, such as, but not limited to, road failure, evacuation, natural disasters, hazardous substance spills, fatal accidents and special events, TENANT's access may, at the Washington State Patrol (WSP) or WSDOT's discretion, be limited or temporarily terminated; Provided further, that any limitation/temporary termination in TENANT's access shall be restored as soon as the circumstances shall allow, as determined by WSDOT.

6. **Permits.** TENANT shall secure all necessary federal, state and local licenses and permits at its sole expense. WSDOT hereby authorizes TENANT to make any and all applications and/or submissions necessary to obtain all licenses and permits (Government Approvals) from all applicable governmental and/or regulatory entities required for construction of wireless communications facilities on the Premises. To the extent authorized by law, WSDOT agrees to cooperate with TENANT, at no cost to WSDOT other than administrative costs, in the submission and/or processing of any such applications, and agrees to execute any documents, applications, or other submissions required therefor. To the extent authorized by law, WSDOT further agrees to take no action that will inhibit, impede or delay TENANT's ability to obtain said Governmental Approvals.

7. **Non-interference.**

A. TENANT shall not use the Premises or access areas in any way which materially interferes with the use of the adjacent WSDOT property or WSDOT's authorized use of the Premises. Similarly, WSDOT shall not use, nor shall WSDOT permit its tenants, employees, or agents to use, any portion of

WSDOT's property in any way which materially interferes with the operations of TENANT authorized by this Lease. Such interference shall be terminated immediately upon notice by the other party. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right to bring an action to enjoin such interference or to terminate this Lease immediately upon written notice.

B. Such interference shall include, but not be limited to, any other use on the Premises that causes electronic or physical interference or obstruction, or degradation of WSDOT's communications uses and/or radio signals.

8. **Term.** The term of this Lease shall be five (5) years, commencing upon execution of this Lease by WSDOT (Anniversary Date), and terminating at 11:59 p.m. on the last day of the month in which the sixth (6th) Anniversary Date shall have occurred.

9. **Renewal.** This Lease may be renewed by the TENANT for three additional five (5) year periods (Renewal Period); Provided that, (a) the TENANT is not in default and has not been in default during the term of this Lease, and (b) there is no public need for the Premises; (c) TENANT's use under this lease does not impair the safety or operation of WSDOT's highway or facility, as determined by WSDOT, and (d) the terms and conditions of this Lease conform to then existing state policies or practice, laws, regulations and contracts, or TENANT is willing to amend this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts. The Renewal Period shall be on the same terms and conditions as set forth herein, except as modified by any changes in policy, practice, laws, regulations or contracts and as reflected in a written amendment signed by both parties. TENANT shall give notice of its intent to renew this Lease for the Renewal Period at least ninety (90) days prior to the expiration of this Lease, or any extension thereof.

10. **Condemnation.** The Premises shall not be considered as part of or as contributing to the use of any adjoining or other properties owned, used, or controlled by the TENANT in the event such other property or property rights of the TENANT are subject to condemnation subsequent to the execution of this Lease.

11. **Termination by WSDOT.**

A. WSDOT may terminate this Lease, without penalty or further liability as follows:

- (1) upon fifteen (15) days written notice to TENANT, if TENANT fails to cure a default for payment of amounts due under this Lease within that 15-day period;
- (2) upon thirty (30) days written notice to TENANT, if TENANT defaults, other than non payment of rent, and fails to cure such default within that 30-day period, or such longer period, as may be reasonably determined by WSDOT, if TENANT is diligently working to cure the default;

(3) immediately, upon written notice, if WSDOT is required by court order, by legislative action or by a governmental agency having jurisdiction, to take some action which would effectively prohibit TENANT's use of the Premises;

(4) immediately, upon written notice, if a receiver is appointed to take possession of TENANT's assets, the TENANT makes a general assignment for the benefit of creditors, or the TENANT becomes insolvent or takes or suffers action under the Bankruptcy Act; or

(5) upon 180 days notice, unless an emergency exists, as determined by WSDOT, then immediately, if WSDOT determines that it is in the best interest of the state of Washington to terminate this Lease.

B. Waiver or acceptance of any default of the terms of this Lease by WSDOT shall not operate as a release of the TENANT's responsibility for any prior or subsequent default.

C. If TENANT defaults on any provision in this Lease, such as, but not limited to, the timely payment of rent, three times within a twelve (12) month period, then the third default shall be deemed "non-curable" and this Lease may be terminated by WSDOT on thirty (30) days notice.

**12. Termination by TENANT.**

A. TENANT may terminate this Lease without penalty or further liability as follows:

(1) upon thirty (30) days written notice for any reason within the sole discretion of the TENANT;

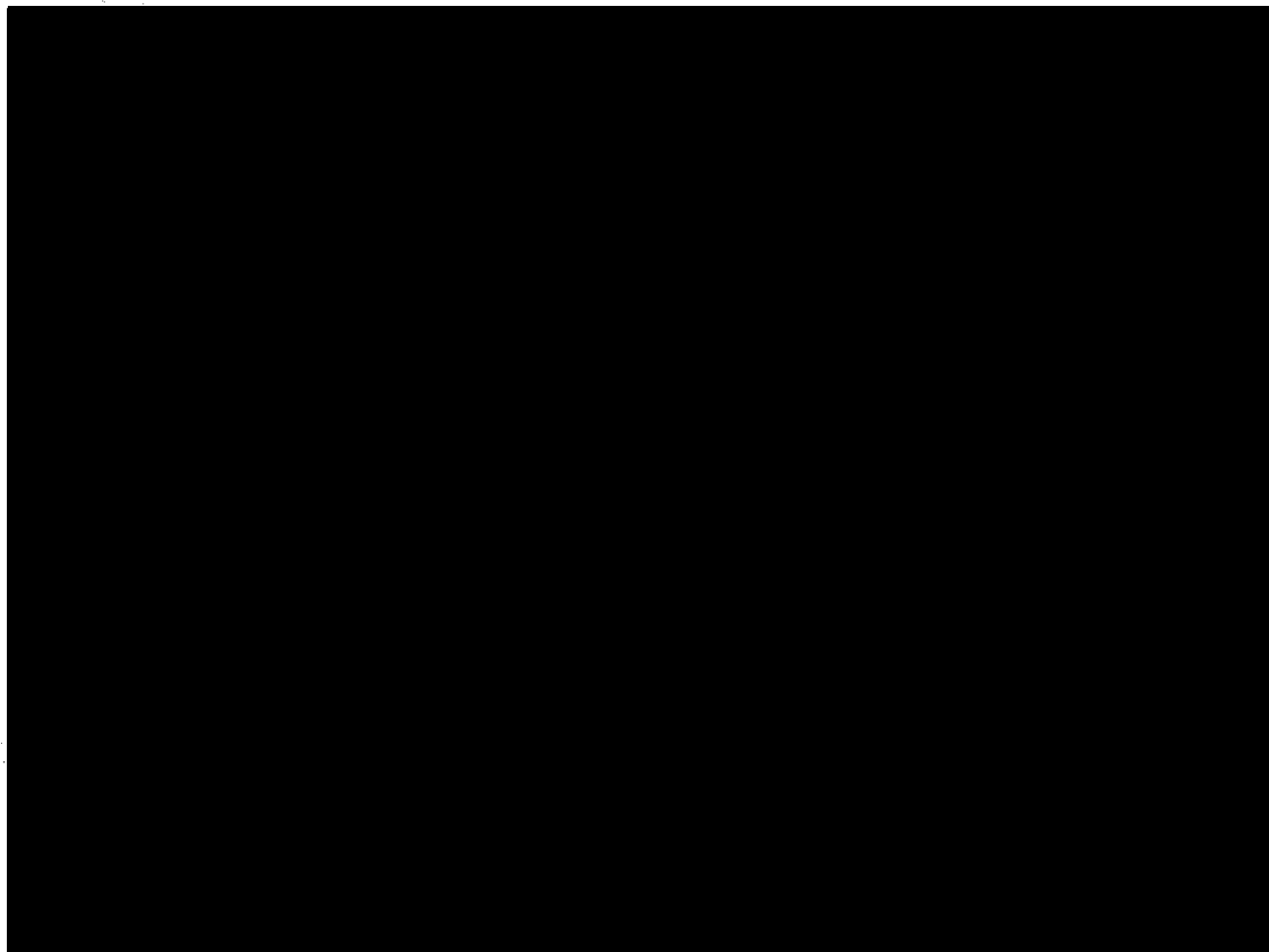
(2) upon thirty (30) days written notice, if WSDOT defaults and fails to cure such default within that 30-day period, or such longer period, as may be reasonably determined by TENANT, if WSDOT is diligently working to cure the default;

(3) immediately, upon written notice, if in TENANT's judgment the Premises is destroyed or damaged so as to substantially and adversely affect the effective use of the Communications Facility.

(4) at the time title to the Premises transfers to a condemning authority, if there is a condemnation of all or part of the Premises, including a sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power. In such event, each party shall be entitled to pursue their own separate awards with respect to such taking.

B. All Rent pre-paid for the Premises by the TENANT prior to the termination date shall be retained by WSDOT; Provided that, TENANT shall be entitled to a pro rata refund of pre-paid Rent in the

event WSDOT terminates this Lease as provided in 11.A.(5) above, or TENANT terminates pursuant to 12.A.(2) or 12.A. (3) above.



**15 Charge for Late Payment.** If any sums payable to WSDOT under this Lease are not received by the fifth (5th) day of each month, TENANT shall pay WSDOT, in addition to the amount due, for the cost of collecting and handling such payment, an amount equal to the greater of ONE HUNDRED and 00/100 DOLLARS (\$100.00) or five percent (5%) of the delinquent amount. In addition, all delinquent sums payable by TENANT to WSDOT and not paid within five (5) days of the due date shall, at WSDOT's option, bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that if the highest rate allowable by law is less than twelve percent (12%) interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and TENANT agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks.

WSDOT's acceptance of less than the full amount of any payment due from TENANT, shall not be deemed an accord and satisfaction, waiver, or compromise of such payment unless specifically agreed to in writing by WSDOT.

16. **Nonapplicability of Relocation Benefits.** The TENANT acknowledges that the signing of this Lease does not entitle the TENANT to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

17. **Encumbrances.** TENANT shall not encumber the Premises.

18. **Environmental Laws.**

A. TENANT represents, warrants and agrees that it will conduct its activities on and off the Premises in compliance with all applicable environmental laws. As used in this Lease, Environmental Laws means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto, including all amendments and/or revisions to said laws and regulations.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of WSDOT and under the terms and conditions specified by WSDOT. For the purposes of this Lease, "Hazardous Substances" shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations, and shall include gasoline and other petroleum products. In the event such permission is granted, the disposal of such materials must be done in a legal manner by TENANT.

C. TENANT agrees to cooperate in any environmental investigations conducted by WSDOT's staff or independent third parties where there is evidence of contamination on the Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having jurisdiction. TENANT will reimburse WSDOT for the cost of such investigations, where the need for said investigation is determined to be caused by TENANT's operations. TENANT will provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean up contamination. TENANT will permit WSDOT to participate in all settlement or abatement discussions. In the event TENANT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) days of such notice, WSDOT may elect to perform such work, and TENANT covenants and agrees to

reimburse WSDOT for all direct and indirect costs associated with WSDOT's work where said contamination is determined to have resulted from TENANT's use of the Premises.

D. TENANT agrees the use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of way.

E. For the purposes of this Lease, "Costs" shall include but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorneys' fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, Ch. 70.105D RCW, et seq., including all amendments and/or revisions to said laws and regulations.

F. TENANT agrees to defend, indemnify and hold WSDOT harmless from and against any and all claims, causes of action, demands and liability, which are caused by or result from TENANT'S activities on the Premises, including but not limited to any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to other properties, including without limitation, the adjacent WSDOT property.

G. TENANT further agrees to retain and indemnify and hold WSDOT harmless from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any Hazardous Substances removed from said property, which Hazardous Substances were released on to the Premises as a result of TENANT's activities.

H. WSDOT hereby agrees to indemnify and hold TENANT harmless from any Costs or liabilities associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises by the acts or omissions of WSDOT, its employees, contractors, and agents. WSDOT further agrees to retain and indemnify and hold TENANT harmless from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any Hazardous Substances removed from said property, which such Hazardous Substances have been released on the Premises as a result of WSDOT's acts or omissions or those of its contractors or agents.

I. WSDOT represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Premises in compliance with all applicable Environmental Laws and that the Premises is free of Hazardous Substances as of the date of this Lease.

J. The provisions of this paragraph shall survive the expiration or termination of this Lease.

**19. Advertising Devices, Signs, and Lighting.**

A. Advertising devices are not permitted on the Premises. Lights outside of the TENANT's equipment shelter are not permitted, except as required by the Federal Aviation Authority (FAA) or the Federal Communications Commission (FCC); Provided that, any such required lights shall require prior written approval by the WSDOT Region Maintenance Superintendent at PO Box 330310 MS 45, Seattle, WA 98133-5910, or other such person or address as may be designated in writing by WSDOT, which approval shall not be unreasonably withheld; Provided further that, WSDOT may deny such approval where the lights, in WSDOT's sole discretion, constitute a hazard to the highway or the motoring public. TENANT shall install and maintain at TENANT's sole expense, any such lighting required to meet FAA or FCC regulations and which have been approved by WSDOT.

B. TENANT shall post and maintain on its equipment cabinet a sign no larger than an eighteen inch (18") square giving an emergency telephone number. The WSDOT Regional Traffic Engineer at PO Box 330310, MS 120, Seattle, WA 98133-5910, or other such person or address as may be designated in writing by WSDOT, shall be offered the opportunity to review and approve this sign for color and content prior to installation. No other signs are permitted on the Premises.

**20. Laws, Ordinances, Regulations.** TENANT shall at all times and at its sole expense, comply with all laws and ordinances, orders, guidelines, policies, directives, rules and regulations of municipal, county, state and federal governmental authorities or regulatory agencies (Laws). TENANT shall defend, indemnify and hold harmless WSDOT, any agents, officers, or employees thereof against any claims arising from any violations by TENANT, its agents or employees, of any such Laws. The indemnity provision of this paragraph shall survive the termination or expiration of this Lease.

**21. Improvements, Fixtures and Personal Property.**

A. TENANT shall provide WSDOT with two complete sets of plans and specifications for grading and all improvements proposed to be placed on the Premises and should be affixed with an appropriate professional structural engineers license. All such plans and any changes thereof are subject to prior written approval by the WSDOT Accommodations and Safety Engineer at PO Box 330310, Seattle, WA 98133-9710, or other such person or address as may be designated in writing by WSDOT. Such approval shall not be unreasonably withheld or delayed.

B. TENANT shall not add to its building to be constructed under this Lease, or construct additional improvements on the Premises except by prior written approval by the WSDOT Accommodations and Safety Engineer at PO Box 330310, Seattle, WA 98133-9710, or other such person or address as may be designated in writing by WSDOT, and under such terms and conditions as may be specified by WSDOT. Such approval shall not be unreasonably withheld or delayed.



C. WSDOT and the Federal Highway Administration may from time-to-time go upon the Leased Premises to inspect any work done by the TENANT to insure compliance with the approved plans and specifications or otherwise. Further, this right shall not impose any obligation upon WSDOT to make inspections to ascertain the safety of the TENANT's improvements or the condition of the Leased Premises.

D. TENANT expressly acknowledges and agrees that WSDOT's rights under this Lease to review, comment on, disapprove and/or accept designs, plans specifications, work plans, construction, equipment, installation, (i) exist solely for the benefit and protection of WSDOT, (ii) do not create or impose upon WSDOT any standard or duty of care toward the TENANT, all of which are hereby disclaimed, (iii) may not be relied upon by the TENANT in determining whether the TENANT has satisfied any and all applicable standards and requirements and (iv) may not be asserted, nor may WSDOT's exercise or failure to exercise any such rights be asserted, against WSDOT by the TENANT as a defense, legal or equitable, to TENANT's obligation to fulfill such standards and requirements and regardless of any acceptance of work by the WSDOT.

E. TENANT's wireless equipment located on the Premises shall remain the exclusive property of TENANT. WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept or maintained in or about the Premises, except such claims or losses that may be caused by WSDOT or its agents or employees.

F. Upon termination or expiration of this Lease under the provisions herein, the improvements constructed on the Premises that remain the personal property of TENANT, shall be removed by TENANT at its expense in a reasonable manner prescribed by WSDOT.

G. WSDOT may remove any of TENANT's personal property not acquired by WSDOT and that remains on the Premises beyond the termination date at TENANT's expense and place it in storage at TENANT's expense for a period of thirty (30) days. WSDOT will notify TENANT in writing when such personal property is placed in storage. In the event TENANT has not removed said personal property from storage within this thirty (30) day period, WSDOT may dispose of it in any manner WSDOT deems appropriate. TENANT shall reimburse WSDOT for the cost of such removal and storage prior to removing said personal property from storage or within thirty (30) days of the date of WSDOT's invoice, whichever occurs first.

**22. Maintenance.** TENANT shall, at its own expense and at all times, keep the Premises and Communications Facility neat, clean and in a sanitary condition, and keep and use the Premises and Communications Facility in accordance with all applicable laws, ordinances, rules, regulations and requirements of governmental authorities. TENANT shall permit no waste, damage or injury to the Premises. TENANT shall make such repairs as necessary to maintain the Premises in as good condition as

existed on the Anniversary Date, reasonable wear, and damage by fire and other casualty for which TENANT is not responsible excepted.

**23 TENANT's Acceptance of Premises.** TENANT has examined the Premises and accepts them in their present condition as part of the consideration of this Lease.

**24. WSDOT's Reservation of Right to Maintain and Grant Utility Franchises and Permits.**

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that such franchises/permits do not materially interfere with TENANT's authorized use of the Premises. Such installation will be accomplished in such a manner as to minimize any disruption to TENANT. The franchise/permit holder will be required to restore paving, grading and improvements damaged by the installation.

B. TENANT will not disturb markers installed by a franchise/permit holder and will contact the franchise/permit holder prior to any excavation in order that the franchise/permit holder may locate the utility. It is TENANT's responsibility to protect legally installed underground utilities from damage caused by itself, its contractors, agents and invitees.

C. Prior to any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve inches (12") or greater, TENANT must call the Underground Utility Locating Service, or its successor organization, to ascertain the existence of underground utilities.

D. TENANT must comply with all provisions of Ch. 19.122 RCW relating to underground facilities.

**25. Taxes, Assessments, and Utilities.** TENANT agrees to pay all taxes and assessments which are the result of TENANT's use of the Premises and/or which may hereafter become a lien on the interest of TENANT in accordance with RCW 79.44.010. TENANT shall pay all taxes which may hereafter be levied or imposed upon the interest of TENANT or by reason of this Lease. TENANT is responsible for and agrees to pay for utilities that serve the Premises.

**26 Liens.**

A. Nothing in this Lease shall be deemed to make TENANT the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. TENANT acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by TENANT.

B. TENANT shall at all times indemnify and hold WSDOT harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, caused by TENANT or as a result of TENANT's actions or omissions and from the cost of defending against such claims, including attorneys' fees.

C. In the event a lien in connection with the aforesaid activities by TENANT is filed upon the Premises, TENANT shall either:

- (1) Record a valid Release of Lien, or
- (2) Deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim, or
- (3) Procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

D. Should TENANT fail to accomplish C.1., 2., or 3., above within thirty (30) days after the filing of such a lien, the TENANT shall be in default.

**27 WSDOT's Right of Entry and Inspection.**

A. WSDOT, for itself and its agents and contractors, and the Federal Highway Administration, reserves the right to enter upon the Premises at any time and without notice to TENANT, but not to go inside the shelter, except on reasonable notice to TENANT and in TENANT's presence, for the purpose of operation, inspection, maintenance, construction, or reconstruction of the highway facility or any element thereof. Further, WSDOT and the Federal Highway Administration may also, from time to time, go upon the Premises for the purpose of inspecting any excavation, construction, or maintenance work being done by TENANT. WSDOT will take all reasonable measures to minimize any disruption to TENANT. WSDOT shall in no way be responsible for any incidental or consequential damages, including, but not limited to, lost profits due to such loss of use by TENANT; Provided, that TENANT may be entitled a pro rata reduction of rent for the period in which the Premises could not be used by TENANT due to such entry.

B. Entry upon the Premises for any other purpose by WSDOT shall be conducted with reasonable notice to the TENANT and during the hours of 8 a.m. to 5 p.m.

**28. Insurance.** At its sole expense, the TENANT shall secure and maintain in effect a policy of general liability insurance issued by an insurer licensed to conduct business in the State of Washington. The insurance policy shall provide liability coverage for any and all claims of bodily injury, property damage, and personal injury arising from the tenant's use of the Premises which is the subject of this Lease. The insurance policy required by this section shall provide coverage of no less than Two Million Dollars

(\$2,000,000.00) combined single limit of liability per occurrence, with a general aggregate limit of no less than Four Million Dollars (\$4,000,000.00) per policy period. The TENANT agrees that WSDOT may require increases in said coverages by written notice to TENANT, as WSDOT deems reasonably necessary. Coverages under said policy shall be triggered on an "occurrence basis," not a "claims made" basis. WSDOT shall be named as an additional insured in the commercial general liability policy required by this section. The policy shall be endorsed with a provision relieving WSDOT of any responsibility for the payment of any policy premium. The endorsement shall require the insurer to provide WSDOT, with no less than THIRTY (30) days written notice before any cancellation of the coverages required by this section. The liability coverages required by this section shall not be subject to any self-insured retained limit of liability of any amount (No Liability Coverage Deductibles). Coverages, if obtained by the TENANT in compliance with this section, shall not be deemed as having relieved the TENANT of any liability.

Further, the TENANT shall provide WSDOT with a certificate of insurance reflecting the insurance coverage required by this section within TEN (10) business days of the execution of this Lease, and within TEN (10) days of receiving a written notice from WSDOT for an increase in the coverage amounts.

**29. Hold Harmless, Indemnification.**

A. TENANT, its successors or assigns, will protect, and hold harmless WSDOT, its authorized agents and employees from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of TENANT, its assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities authorized by this Lease.

B. TENANT further agrees to defend WSDOT, its agents or employees in any litigation, including payment of any costs or attorneys' fees for any claims or action commenced, arising out of, or in connection with, acts or activities authorized by this Lease, whether those claims, actions, costs, damages or expenses result from acts or activities occurring on or off the Premises.

C. WSDOT, its successors or assigns, will protect, save and hold harmless TENANT, its authorized agents and employees from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of WSDOT, its assigns, agents, contractors, licensees, or employees, arising out of or in connection with any acts or activities authorized by this Lease.

D. WSDOT further agrees to defend TENANT, its agents or employees in any litigation, including payment of any costs or attorney's fees for any claims or action commenced, arising out of, or in connection with, acts or activities authorized by this Lease, whether those claims, actions, costs, damages or expenses result from acts or activities occurring on or off the Premises.

E. The obligation contained in this Paragraph 29 shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of WSDOT or its authorized agents or

employees; Provided that, if the claims or damages are caused by or result from the concurrent negligence of (a) WSDOT, its agents or employees and (b) TENANT, its agents, subtenants, or employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of TENANT or TENANT's agents or employees.

F. The indemnification provisions contained in this paragraph shall survive the termination or expiration of this Lease.

30. **Nondiscrimination.** TENANT, for itself, its successors, and assigns as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of Ch. 49.60 RCW, as to the Premises.

31. **Assignment.**

A. Neither this Lease, nor any rights created by it, may be assigned, sublet, or transferred without written permission from WSDOT. Any such assignment shall be in writing on a form approved by WSDOT and shall include an assumption of this Lease by the assignee.

B. Notwithstanding the foregoing, TENANT may assign its interest in this Lease, without WSDOT's consent, to any entity which controls, is controlled by, or is under common control with TENANT, or to any entity resulting from any merger or consolidation with TENANT, or to any partner of TENANT, or to any partnership in which TENANT is a general partner, or to any person or entity which acquires fifty one percent (51%) or more the assets of TENANT or fifty one percent (51%) or more of the assets of the TENANT in the Metropolitan Trading Area in which the Premises is located, as a going concern, Provided, that the assignment includes an assumption of the Lease by the assignee; and Provided Further, that TENANT shall provide WSDOT with a copy of said written assignment or written notice of such assignment within a reasonable time of its execution. TENANT shall be bound by and responsible for compliance with all provisions of this Lease until such time as notice of the successor TENANT has been received by WSDOT.

C. WSDOT hereby consents to the creating or granting of a security instrument by which TENANT's rights under this Lease serve as collateral security to any entity (Security Entity) that provides financing for the purchase of the equipment to be installed at the Premises. The creating or granting of such a security interest shall not be deemed an assignment under this lease; Provided, that in the event the Security Entity, pursuant to the terms of the security instrument, acquires the leasehold estate created under this Lease, an assignment shall be deemed to have occurred and (1) The TENANT and the Security Entity shall execute an assignment and assumption of the Lease in a form acceptable to WSDOT; (2) TENANT shall promptly provide WSDOT with a copy of said assignment and assumption; and (3) TENANT shall be bound by and responsible for compliance with all provisions of this Lease until such time that the assignment and assumption has been received by WSDOT.

D. WSDOT's consent to one assignment shall not waive the requirement of obtaining WSDOT's consent to any subsequent assignment.

E. Should WSDOT sell, lease, transfer, or otherwise convey all or any part of the Premises that is subject to this Lease to any transferee other than TENANT, such transfer shall be subject to this Lease.

F. In the event TENANT terminates this Lease and third parties also occupy the tower, TENANT shall assign its interest in such agreement to WSDOT, if WSDOT desires to assume TENANT's position in such agreements.

**32. Performance by WSDOT.** If TENANT defaults in the performance or observation of any covenant or agreement contained in this Lease, WSDOT, without notice if deemed by WSDOT that an emergency exists, or if no emergency, with thirty (30) days notice, may direct TENANT to stop work and may itself perform or cause to be performed such covenant or agreement and may enter upon the Premises for such purpose. Such an emergency shall include, but not be limited to, endangerment of life, the highway facility, or the Highway Advisory Radio System or failure of TENANT to obtain in a timely manner any insurance. TENANT shall reimburse WSDOT the entire cost and expense of such performance by WSDOT within thirty (30) days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this paragraph shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

**33. Restoration of Site.** Prior to the termination or expiration date of this Lease, TENANT agrees, if so directed by WSDOT, to restore the Premises to its condition prior to TENANT's occupancy, reasonable wear and tear excepted. This work is to be done at TENANT's expense and to the reasonable satisfaction of WSDOT.

**34. Vacation of Leased Premises.** Upon termination of this Lease, the TENANT shall cease its operations on and/or use of the Leased Premises. In the event the TENANT fails to vacate the Leased Premises on the date of termination, it shall be liable for any and all costs to WSDOT arising from such failure.

**35. Modifications.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto. No failure on the part of either party to enforce any covenant or provision herein contained, nor any waiver of any right thereunder by the state, unless in writing, shall discharge or invalidate such covenant or provision or affect the right of the either party to enforce the same in the event of any subsequent breach or default.

**36. Waiver of WSDOT's Lien Rights.** WSDOT hereby waives any and all lien rights it may have, statutory or otherwise, concerning TENANT's radio transmitting or receiving equipment or any

portion thereof, which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and WSDOT gives TENANT the right to remove all or any portion of same from time to time in TENANT's sole discretion and without WSDOT's consent.

37. **Brokers' Fees.** If TENANT is represented by a real estate broker in this transaction, TENANT shall be fully responsible for any fee due such broker, and shall hold WSDOT harmless from any claims for commission by such broker.

38. **Cooperation in Execution of Subsequent Documents.** WSDOT and TENANT agree to cooperate in executing any documents (including a Memorandum of Lease) necessary to protect the rights of the parties granted by this Lease.

39. **Interpretation.** This Lease shall be construed in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only, and shall have no effect on the construction or interpretation of any paragraph hereof.

40. **Invalid Provision.** If any provision or condition of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

41. **Totality of Agreement.** It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by TENANT or by WSDOT, except to the extent that the same are expressed in this Lease. And it is further understood that this Lease shall not be valid and binding upon WSDOT unless and until accepted and approved by the Secretary of Transportation or his duly authorized representative.

42. **Attorney Fees.** The substantially prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs, and expenses in connection with such action or proceeding from the other party.

43. **Venue.** TENANT agrees that the venue of any action or suit concerning this Lease shall be in the Thurston County Superior Court, and all actions or suits thereon shall be brought therein, unless the parties mutually agree otherwise, in writing.

44. **Notices.** Except as otherwise designated in this Lease, wherever in this Lease written notices are to be given or made, they will be delivered or sent by certified mail addressed to the parties at the address listed below unless a different address shall be previously designated in writing and delivered to the other party. Notice shall be deemed effective as of the delivery date. Tenant agrees to accept service of process or certified mail at the address provided for herein, provided such address is located in the State of Washington. Otherwise, TENANT designates the Secretary of State of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

TENANT :

AT&T Wireless

Attn: Property Specialist - Western  
Region, Property Management

Re: AWS Site #SD42,

Bechtel Site #961S03909

2729 Prospect Park Drive

Suite 100

Rancho Cordova, CA 95670

STATE:

WASHINGTON STATE

DEPARTMENT OF TRANSPORTATION

Attn.: Director, Real Estate Services

PO Box 47338

Olympia, WA 98504-7338

Copy to:

AT&T Wireless

Attn: Legal Department

Re: AWS Site #SD42,

Bechtel Site #961S03909

2729 Prospect Park Drive

Suite 200

Rancho Cordova, CA 95670

Copy to:



Signatures:

Accepted and Approved by:

Dated: 2/26/03


Dated: March 6, 2003

AT&T Wireless Services of Washington,  
LLC, an Oregon limited liability company,  
d/b/a AT&T Wireless

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

By AT&T Wireless Services, Inc.,  
a Delaware corporation, its member

By   
SYSTEM DEVELOPMENT MANAGER

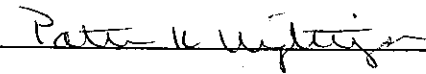
By: 

Gerald L. Gallinger  
Director, Real Estate Services

Title SYSTEM DEVELOPMENT MANAGER

APPROVED AS TO FORM

March 6, 2003

By: 

Assistant Attorney General

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

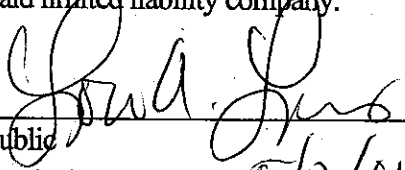
) ss

COUNTY OF KING)

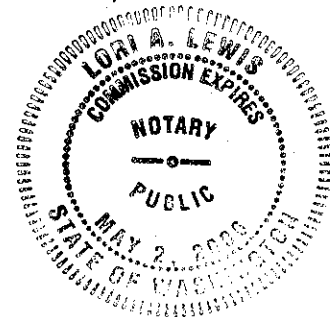
I CERTIFY that on Feb 26, 2003, LOUIS R. LEVY personally came before me and this person acknowledged under oath to my satisfaction, that:

(a) this person signed, sealed and delivered the attached document as **SYSTEM DEVELOPMENT MANAGER** of **AT&T Wireless Services, Inc.** a corporation of the State of Delaware, which is the member of AT&T Wireless Services of Washington, LLC, the limited liability company named in this document;

(b) this document was signed and delivered by the corporation as its voluntary act and deed, as the member of the limited liability company, on behalf of said limited liability company.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 5/2/06



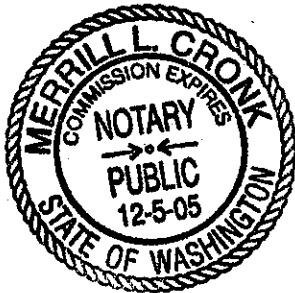
STATE AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF Thurston )

On this 6<sup>th</sup> day of MAR 2003, 2003 before me personally appeared Gerald L. Gallinger, to me known to be the duly appointed Real Estate Services Director, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the 6<sup>th</sup> day of MAR 2003, 2003.

Merrill L. Cronk  
(Signature)



MERRILL L. CRONK  
(Print or type name)

Notary Public in and for the State of Washington  
residing at BREMER TON

My commission expires 12-5-2005