

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Authorization for the City Manager to Execute Telecommunication Facilities Lease Agreements and Memorandums of Lease for Twin Ponds Park and Shoreline Park with Clearwire Corporation
DEPARTMENT: Parks, Recreation and Cultural Services Department
PRESENTED BY: Dick Deal

PROBLEM/ISSUE STATEMENT:

Whether City Council should authorize the City Manager to execute two telecommunications lease agreements and memorandums of lease with Clearwire Corporation for installation of telecommunication antennas and supporting facilities in Twin Ponds Park and Shoreline Park?

DISCUSSION:

Clearwire Corporation desires to enter into lease agreements with the City for 49 square feet of space in Twin Ponds Park and 49 square feet of space in Shoreline Park for housing, construction and operation of a telecommunications antenna and supporting facilities. The locations of the telecommunication facilities are depicted in Exhibit B to the lease agreements. The Park Advisory Board has reviewed the proposed leases and has no concerns. No special zoning permits are required since the facilities are co-located on existing poles.

The lease agreements are both for terms of five (5) years, with two (2) renewable options of five (5) years each. Clearwire will pay the City \$1,000 per month to lease the space for each site, and there will be a 3% annual increase in rent.

The leases also includes the following provisions:

- Substantial expansion of the facilities will result in review of the rental rate.
- Clearwire is obligated to cure any violation or defaults prior to renewal of the lease.
- The facilities cannot be located or maintained so as to interfere with use of public ways.
- The facilities must be maintained in good and safe condition, and the City has a right to inspect the facilities at any time.
- The facilities can be relocated, if the City determines relocation is necessary, or can remove the facilities in the event of an emergency.
- The City may terminate or revoke the lease if Clearwire defaults or violates certain lease provisions.

- Upon expiration of the lease and notice by the City, Clearwire will remove all improvements.
- Subleasing is prohibited.

FINANCIAL IMPACT:

The City will receive \$1,000 a month from Clearwire for each site, with annual increases of 3%.

RECOMMENDATION

Staff recommends that Council authorize the City Manager to execute the Telecommunications Facilities Lease Agreements and Memorandums of Lease for Twin Ponds Park and Shoreline Park with Clearwire Corporation.

Approved By: City Manager  City Attorney 

ATTACHMENTS

Attachment A: Telecommunications Facilities Lease Agreement and Memorandum of Lease for Twin Ponds Park

Attachment B: Telecommunications Facilities Lease Agreement and Memorandum of Lease for Shoreline Park

TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT

THIS LEASE AGREEMENT entered into by and between the City of Shoreline, a municipal corporation duly organized and existing under the laws of the State of Washington, as Lessor (hereinafter referred to as "City") and ClearWire, LLC, a Nevada limited liability company (hereinafter referred to as "Lessee").

W I T N E S S E T H:

1. PREMISES. The City owns the real property known as Twin Ponds Park (Assessor's Parcel Number 2881700590) legally described in Exhibit A. The City leases to the Lessee 49 square feet of space located at 2341 N. 155th St., Shoreline, WA. 98133, as depicted in Exhibit B, for housing, installing, constructing, operating and maintaining certain telecommunications facilities (hereinafter referred to as "Premises"). Lessee accepts the Premises for such purpose, subject to the considerations, terms and conditions specified in this Telecommunications Facilities Lease Agreement (hereinafter referred to as "Lease").

2. DEFINITIONS. For the purpose of this Lease, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

"Commencement Date" means the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work.

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

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

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

"Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service;

"Telecommunications facilities" means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, electronics,

equipment storage structures and other appurtenances used or to be used to transmit, receive, distribute, provide, house or offer telecommunications services;

“Telecommunications provider” means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities;

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Utility easement” means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

3. USES AND PURPOSES. Lessee shall have the use and occupancy of the Premises for the purpose of transmission and reception of telecommunication and signals in any and all frequencies that Lessee is allowed to use by the Federal Communications Commission using real property and telecommunications facilities approved in Exhibit B. Lessee shall be responsible for adherence to all federal, state and local regulations pertaining to the operation of a communications facility.

Lessee shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, as described in Exhibit B after obtaining required permits.

City shall provide Lessee access to the Premises at all times adequate to service the Premises and the telecommunication facilities at all times during this Lease. Lessee shall have the right to use existing park access drives and parking spaces. Lessee agrees to provide the City with a schedule outlining the frequency of required visits (e.g., quarterly maintenance check, monthly site cleanup, etc.), and to give the City at least five (5) days notice prior to the use of substantial and/or heavy equipment and the excessive use of parking spaces.

Lessee shall provide the City with a list of all authorized individuals who will have access to the Premises. Notification of changes to the list shall be provided to the City within 24 hours by telephone or fax from the point of contact identified in Section 40(G), which notice shall be followed by written notification pursuant to Section 40(G). Lessee shall be responsible for conducting appropriate background checks of all of their employees.

Employees visiting the Premises shall be readily identifiable as employees of the Lessee by uniform identification badge, marked company vehicle, or other proof of employment. For the purposes of this section, the term “employees” includes contractors and subcontractors.

4. **NON-EXCLUSIVE LEASE.** This Lease is nonexclusive and does not preclude the City from granting a similar lease, right, license, franchise, etc. to other carriers, providers or other persons for telecommunications or any other purpose.

5. **TERM OF LEASE.** This Lease shall be valid for a term of five years commencing on the Commencement Date and terminating at 11:59 p.m. on the day before the five (5) year anniversary of the Commencement Date. Lessee shall have the right to extend the Term of this Lease for two (2) additional terms (each a "Renewal Term") of five (5) years each. The Renewal Terms shall be on the same terms and conditions as set forth herein. Lessee shall provide written notice to City of its intent to extend each Renewal Term at least thirty (30) days before the commencement of each Renewal Term.

6. **RIGHTS GRANTED.** This Lease does not convey any right, title or interest in the City property, but shall be deemed the right only to use and occupy the City property for the limited purposes and term stated in the Lease. Further, this Lease shall not be construed as any warranty of title.

7. **INTERFERENCE WITH OTHER USERS.** The Lessee acknowledges that the City may enter into leases with other tenants for their equipment and telecommunications facilities for the purposes of transmitting and receiving telecommunication signals from City property. The City, however, is not in any way responsible or liable for any interference with Lessee's use of the City property which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with the Lessee's use of the City property, and such use or operation was not in existence on the date of execution of this Lease, and the Lessee cannot resolve this interference with the other tenants, the City will, upon written request by Lessee, cause such interfering use to cease. The Lessee shall cooperate with all other tenants to identify the causes of and work towards the resolution of any electronic interference problem. In addition, the Lessee agrees to eliminate any radio or television interference caused to City-owned facilities or surrounding residences at Lessee's own expense and without installation of extra filters on City-owned equipment. Lessee further agrees to accept such interference as may be received from City operated telecommunications or other City facilities located upon the City property subject to this Lease except those City antenna sites placed upon Lessee's facilities pursuant to Section 10(B).

8. **OWNERSHIP AND REMOVAL OF IMPROVEMENTS.** All buildings, landscaping and all other improvements, except telecommunications facilities, shall become the property of the City upon expiration or termination of the Lease. In the event that the City requires removal of such improvements after termination of the Lease, such removal shall be accomplished at the sole expense of the Lessee and completed within 30 days after receiving notice from the City requiring removal of the improvements. Additional time may be granted upon the discretion of the City which approval shall not be unreasonably withheld. In the event that telecommunications facilities or other equipment are left upon City property after expiration or termination of the lease, they shall, at the City's option, if not removed by the Lessee upon 30 days written notice from the City, be removed and stored at the expense of Lessee. Stored

telecommunications facilities that are not claimed by the Lessee within six (6) months from termination of the Lease shall become the property of the City.

9. CANCELLATION OF LEASE BY LESSEE.

A. All Leases are contingent upon the Lessee obtaining all necessary permits, approvals and licenses for the proposed facilities. In the event that the Lessee is unable to obtain all such permits, approvals and licenses, it may cancel its lease, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days prior written notice to the City. Lessee agrees to restore City property to original condition if cancellation is requested.

B. In the event Lessee determines that the Premises are unsuitable for its intended purpose, or if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference, the Lessee shall have the right to cancel the Lease upon 180 days written notice to the City. However, no prepaid rent shall be refundable; except in the event any changes occur with respect to the City's use of the property subsequent to the effective date of this Lease (including but not limited to additional Lessees as permitted by the City) and such changes result in the property becoming unsuitable for Lessee's intended purpose.

10. COMPENSATION TO THE CITY.

A. Starting on the Commencement Date and on the first day of each month thereafter during the term of the Lease, Lessee shall pay rent at a rate of One Thousand and No/100 Dollars (\$1,000.00) per month, prorated for any partial months. Substantial expansion of the initial configuration contained in Exhibit B will result in review and possible re-negotiation of the rental rate contained herein. Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three percent (3%) of the Rent for the previous year.

Any payments received after fifteen (15) days after the due date shall include a late payment penalty of 2% of the annual rental fee for each day or part thereof past the due date.

B. Additional Consideration. City shall be allowed, at City's sole expense, to attach City's communication antennas to Lessee's telecommunications tower provided City first obtains Lessee's prior written consent for such attachments. Such consent shall not be unreasonably withheld. Lessee's approval for said attachments shall be contingent upon determining whether Lessee's tower is properly engineered to accommodate City's antenna system and such transmission shall not result in any impairment or diminution in the quality of Lessee's service. Further, said approval shall be given only after Lessee has reviewed and approved City's engineering plans for said antenna attachments in a location specified by Lessee. Approval shall not be unreasonably withheld. Upon written approval by Lessee, said attachments shall be installed by qualified licensed contractors and in accordance with Lessee's directives for the method of installment and with permits issued by all applicable governmental authorities having jurisdiction which shall first be obtained by City at its sole expense. City

acknowledges and agrees that Lessee reserves the right to relocate City's antennas at any time(s) to accommodate modifications required for Lessee's future system requirements, provided such relocation shall provide equivalent quality of service after such relocation.

11. AMENDMENT OF LEASE. Except as provided within the existing Lease, a new Lease shall be required of any telecommunications carrier or other entity that desires to substantially expand, modify, or relocate its telecommunications facilities or other equipment located upon the Premises. If ordered by the City to locate or relocate its telecommunications facilities or other equipment on the City property pursuant to Section 19, the City shall grant a lease amendment.

12. OBLIGATION TO CURE AS A CONDITION OF RENEWAL. No Lease shall be renewed until any ongoing violations or defaults in the Lessee's performance of the Lease have been cured, or a plan detailing the corrective action to be taken by the Lessee has been approved by the City.

13. IMPROVEMENTS. During the term of this Lease if Lessee wishes to substantially expand the initial configuration contained in Exhibit B, Lessee will provide at least thirty (30) days notice to City. Substantial expansion may require a new Lease.

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

15. INTERFERENCE WITH THE PUBLIC WAYS. The Lessee shall not locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities which interfere with public ways shall be moved by the Lessee, at the Lessee's cost, temporarily or permanently, as determined by the City Public Works Director.

16. REPAIR AND EMERGENCY WORK. In the event of an unexpected repair or emergency, the Lessee may commence such repair and emergency response work as required under the circumstances, provided the Lessee shall notify the City as promptly as reasonably possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

17. MAINTENANCE OF LEASE FACILITIES. The Lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. Lessee shall not permit waste, damage, or injury to the premises including any City property, public ways of the City, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. Lessee shall not restrict site access to City. City shall have the exclusive right to inspect the Lessee's telecommunications facilities and equipment at any time during the term of this Lease to ensure compliance with the

terms and conditions herein; Provided, however, Lessee has the right to be present at all inspections of Lessee's telecommunications facilities and equipment, and City shall give Lessee at least 24 hours prior notice of such intent.

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

19. RELOCATION OR REMOVAL OF FACILITIES. Within one hundred eighty (180) days following written notice from the City, the Lessee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways or upon City property whenever the City shall have determines that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways or City property; and

B. The operations of the City or other governmental entity in or upon the public ways or City property.

The City will allow Lessee to relocate the telecommunications facilities to another comparable, mutually agreeable location in Twin Ponds Park. Additional time for removal or relocation may be granted at the discretion of the City which extension shall not be unreasonably withheld. If Lessee fails to remove the property upon request by the City, Lessee agrees to reimburse the City for any and all removal costs incurred by the City.

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

A. Upon expiration or termination of the Lessee's Lease without approved extension or renewal;

B. Upon abandonment of a facility within the public ways or real property of the City. Any property of a Lessee shall be deemed abandoned if left in place 30 days after expiration or termination of the Lease;

C. If the system or facility was constructed or installed without the prior grant of a Lease;

D. If the system or facility was constructed or installed without the prior issuance of a required City permits; and

E. If the system or facility was constructed or installed at a location not permitted by the Lease.

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

21. EMERGENCY REMOVAL OR RELOCATION OF FACILITIES. The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the City and upon City property, as the City may determine in good faith to be necessary in response to any public health or safety emergency. The City shall not be liable to Lessee, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section. The City will give notice to the Lessee prior to cutting or moving the facilities, if practical.

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

23. RESTORATION OF PUBLIC WAYS, OTHER WAYS AND CITY PROPERTY.

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

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

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

D. The Public Works Director shall be responsible for inspection and final approval of the condition of the public ways, other ways, and City property following any construction and restoration activities therein. Further, the provisions of this Section shall survive the expiration, revocation, or termination of this Lease.

24. FACILITIES MAPS. The Lessee shall provide the City with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of its telecommunications facilities within the public ways and upon City property. The Lessee shall provide the City with updated maps upon request by the City.

25. BOOKS, RECORDS AND MAPS. All technical specifications to evaluate interference with potential lessees maintained by the Lessee with respect to its telecommunications facilities on the Premises shall be made available for inspection by the City at reasonable times and intervals at Lessee's offices where such records are ordinarily stored upon fifteen (15) days prior written notice; *Provided, however*, that nothing in this Section shall be construed to require the Lessee to violate state or federal law regarding subscriber privacy, nor shall this Section be construed to require the Lessee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

26. SUB-LEASING. Lessee is not permitted to sublet the Premises.

27. UTILITIES. Electricity, HVAC and telephone service, or other utilities are to be provided to the Premises and Site at Lessee's expense and as outlined in Exhibit B. City shall cooperate with Lessee in obtaining utility service.

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

29. INSURANCE. The Lessee shall, as a condition of the Lease, secure and maintain the following liability insurance policies insuring both the Lessee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers,

consultants, and volunteers against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Lessee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

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

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

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

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

E. The liability insurance policies required by this Section shall be maintained by the Lessee throughout the term of the Lease, and such other period of time during which the Lessee is operating without a Lease hereunder, or is engaged in the removal of its telecommunications facilities. The Lessee shall provide an insurance certificate, together with an endorsement designating the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to said Lease. Lessee warrants that it shall pay any deductibles pursuant to its standard policies, and shall indemnify Lessor for any losses or claims resulting from Lessee's failure to pay said deductible. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Lessee. The Lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Lessee's insurance and shall not contribute with it. The City shall be provided thirty (30) days advance notice of cancellation of any coverages required in 29.A. above. All of Lessee's insurance requirements may be satisfied through any combination of excess liability and/or umbrella policies.

F. Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the Lessee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

30. GENERAL INDEMNIFICATION.

A. Lessee covenants not to bring suit against the City and hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officers, employees, agents and volunteers from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which the Lessee might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of Lessee's performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the Lessee, its agents, employees, representatives or assigns. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of the City. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

B. Lessor covenants not to bring suit against Lessee and hereby agrees to defend, indemnify, and hold harmless Lessee, its directors, officers, employees and agents from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which the City might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of the City's performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the City, its officers, employees, agents and volunteers. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of Lessee. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

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

31. DEPOSIT FOR REMOVAL. The Lessee shall post a \$1,000.00 refundable deposit with the City for removal of any equipment and facilities. This deposit shall be refundable upon Lessee's removal of the equipment in compliance with Section 8 of this Agreement.

32. ASSIGNMENTS OR TRANSFERS OF LEASE. Tenant may not assign, or otherwise transfer all or part of its interest in this Agreement or in the Premises without prior written consent of the Landlord; provided, however, that Tenant may assign its interest to any lender in connection with a financing agreement, its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock assets.

A. No Lease shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the Lease, unless otherwise provided.

B. The Lessee and the proposed assignee or transferee of the system shall provide and certify the following information to the City not less than sixty (60) days prior to the proposed date of transfer:

- (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
- (2) All information required of a lease applicant pursuant to Section 4 with respect to the proposed transferee or assignee; and
- (3) Any other information reasonably required by the City.

C. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold and operate the telecommunications facility pursuant to this Lease.

D. Unless otherwise provided in this Lease, the Lessee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Lease. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of the lease, system, or integral part of a system without prior written approval of the City under this Section or pursuant to the Lease shall be void and is cause for revocation of the lease.

F. Lessee shall make no assignment or transfer of this Agreement without obtaining the written consent of Lessor, which consent shall not be unreasonably withheld.

33. TRANSACTIONS AFFECTING CONTROL OF LEASE. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the Lessee, of the ownership or working control of the telecommunications facility, of the ownership or working control of affiliated entities having ownership or working control of the Lessee or of a telecommunications facility, or of control of the capacity or bandwidth of the Lessee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 32 hereof. The Lessee shall

promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Lessee's company. Every change, transfer, or acquisition of control of a Lessee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution or other appropriate order denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the Lease. Approval shall not be required for mortgaging purposes or if said transfer is from the Lessee to another person or entity controlling, controlled by, or under common control with the Lessee

34. REVOCATION OR TERMINATION OF LEASE. The Lease granted by the City to use or occupy public ways of the City or City property may be terminated for the following reasons:

- A.** Lessee's construction or operation in the City or in the public ways of the City or upon City property without proper City authorization;
- B.** Lessee's construction or operation at an unauthorized location;
- C.** Unauthorized substantial transfer of control of the Lessee;
- D.** Unauthorized assignment of Lease;
- E.** Unauthorized sale, assignment or transfer of Lessee's Lease, assets, or a substantial interest therein;
- F.** Misrepresentation by or on behalf of the Lessee in any written statement upon which the City relies in making the decision to grant, review or amend said Lease;
- G.** Abandonment of telecommunications facilities in the public ways or upon City property;
- H.** Failure to relocate or remove facilities as required in this Lease;
- I.** Failure to pay taxes, compensation, fees or costs when and as due the City;
- J.** Insolvency or bankruptcy of the Lessee;
- K.** Failure to construct or operate in accordance with approved permits; and
- L.** Violation of any material provision or term of this lease.
- M.** The Federal Communications Commission or its successor entity determines that the telecommunications facilities installed on the Premises are hazardous to health or safety.

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

36. STANDARDS FOR REVOCATION OR LESSER SANCTIONS. If the City determines that a Lessee willfully violated or failed to comply with any of the provisions of this Lease after notice is given the Lessee by the City under the provisions of this Lease, then the Lessee shall forfeit all rights conferred hereunder and the Lease may be revoked or annulled by the City. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies and to recover damages and costs incurred by the City by reason of the Lessee's failure to comply.

37. NOTICE OF ENTRY ON PRIVATE PROPERTY. If directed by the City, at least 24 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform permitted new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the Lessee. A door hanger may be used to comply with the notice and posting requirements of this Section. The Lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Provided, however, that nothing in this Lease shall permit the Lessee to unlawfully enter or construct improvements upon the property or premises of another.

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

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

40. MISCELLANEOUS.

A. This agreement shall be governed by the laws of the State of Washington.

B. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

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

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

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

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

G. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, to the address of the respective parties set forth below:

LESSOR:

City of Shoreline

Attn: Director, Parks, Recreation and Cultural Services

17544 Midvale Avenue North

Shoreline, WA 98133-4921

Lessee: Clearwire, LLC

Attn: Property Manager

10210 NE Points Drive, Suite 210

Kirkland, WA. 98033

Telephone: 425 216-7600

Fax: 425 216-7900

with a copy to: ClearWire, LLC

Attn: Law Department

10210 NE Points Drive, Suite 210

Kirkland, WA. 98033

Telephone: 425 216-7600

Fax: 425 216-7900

and with a copy to:

The individuals identified in this paragraph shall be the specific point of contact for each party regarding all topics. Any change to this point of contact shall be delivered to the other party in writing by certified or registered mail, return receipt requested.

41. ENVIRONMENTAL. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or

hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease. Lessee may conduct soils testing on the Premises.

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

LESSEE:

Date: _____

CITY OF SHORELINE

Date: _____

STEVEN C. BURKETT, City Manager

APPROVED AS TO FORM:

IAN R. SIEVERS, City Attorney

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

On this _____ day of _____, 2005, personally appeared _____
to me known to be the _____ of _____, a _____
_____, 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/she was authorized to execute said
instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and
year first above written.

Notary Public in and for the State of _____
Residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 20____, personally appeared Steven C. Burkett to me known, to be the City Manager of the City of Shoreline, a municipal corporation, that executed the within and foregoing instrument, and acknowledged said instrument 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 she was authorized to execute said instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington
Residing at _____
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

N. PONDS PARK

CEL 1

The South 165 feet of Lot 3, and Lot 4, EXCEPT the South 180 feet thereof, ALL in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, page 72, records of King County; EXCEPT the West 10 feet thereof conveyed to King County for Meridian Avenue, by Deeds recorded under Auditor's File Nos. 2884689 and 2884692.

SUBJECT TO: Right to make necessary slopes for cuts or fills upon property herein described as granted by Deeds recorded under Auditor's File No. 2884689 and 2884692.

CEL 2

That portion of Tract 2, in Block 3 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, page 72, records of King County, lying Westerly of Primary State Highway No. 1, Seattle Freeway, E. 145th St. to E. 200th St. Condemned in King County Superior Court cause No. 588865, EXCEPT the West 10 feet thereof conveyed to King County for road under Auditor's File No. 2307202.

SUBJECT TO: Relinquishment of right of access to state highway and of light, view and air, under terms of deed to the State of Washington, recorded August 20, 1962, under Superior Court Cause No. 588865.

CEL 3

Tracts 15 and 16 in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, on page 72, records of King County, EXCEPT that portion lying Easterly of a line drawn parallel with and 40 feet Westerly, when measured at right angles and/or radially, from the Relocated First Avenue Northeast Survey Line of Primary State Highway No. 1, Seattle Freeway, East 145th Street to East 200th Street; conveyed to the State of Washington by deed recorded under Auditor's File No. 546938; and EXCEPT that portion of said Tract 16, as follows: Beginning on a point on the North line of said Tract 16, which is 272.50 feet East from the Northwest corner of said Tract 16; thence Easterly along said North line to intersect the Westerly margin of relocated First Avenue Northeast as established by deed recorded under Auditor's File No. 5483419, records of King County, Washington; thence Southerly along said Westerly margin to the intersection of the Easterly projection of that certain line 118.25 feet in length as described in a deed recorded under Auditor's File No. 4312110, records of King County, Washington; thence West along said certain line and Easterly projection to that certain point referred to as the true point of beginning in describing that certain

tract of land as conveyed by deed recorded under said Auditor's File No. 4312110; thence Northwesterly along the Westerly line of said certain tract, 52.88 feet to an angle point in said Westerly line; thence North 68 feet to the true point of beginning of this description; EXCEPT the North 10 feet of said Tract 16 condemned for North 155th Street in King County Superior Court Cause No. 118650.

PARCEL 4

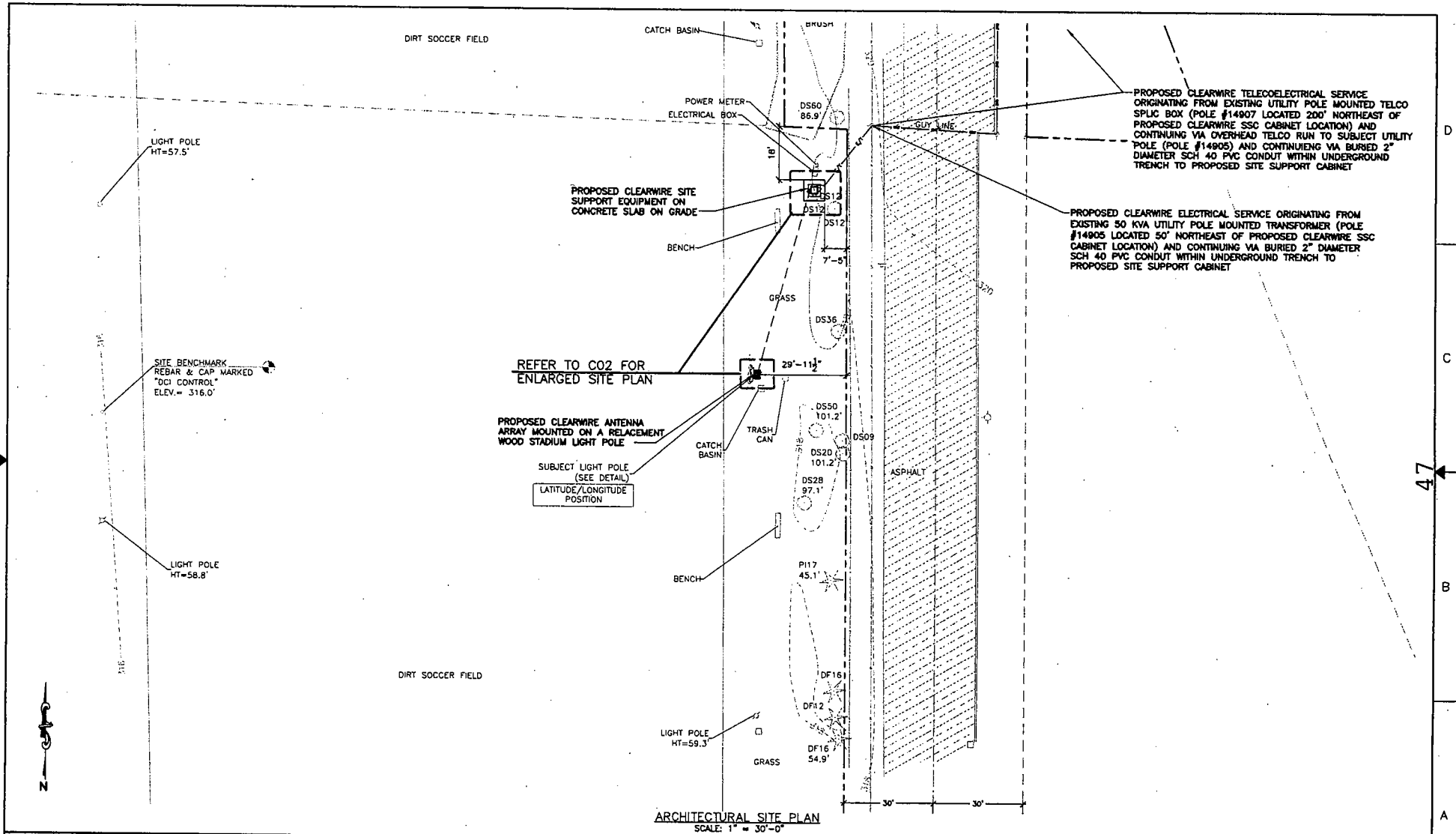
Tract 13 in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, on page 72, records of King County; EXCEPT the West 30 feet of the South 60 feet conveyed to King County for road by deed recorded under Auditor's File No. 4066472.

PARCEL 5

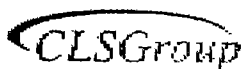
Tract 14 in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, on page 72, records of King County; EXCEPT the East 10 feet thereof as conveyed to King County by Deed recorded under Auditor's File No. 2307201.

PARCEL 6

That portion of Tract 16 Block 4, Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats on page 72, records of King County, described as follows: Beginning at a point on the Southerly line of Tract 15 in said Block 4 which is 399.05 feet East of the Southwest corner thereof and running thence Northerly parallel with the East line of said Tracts 15 and 16, a distance of 513.89 feet, more or less, to a point which is 130 feet Southerly of the North line of said Tract 16; thence Westerly parallel with the Northerly line of said Tract 16 a distance of 118.46 feet to the true point of beginning; thence Easterly parallel with the Northerly line of said Tract 16 to the Westerly line of First Avenue, Northeast as deeded to King County by deeds recorded under Auditor's File Nos. 2307205, 2383278 and 2410821, records of said county; thence Northerly along said Westerly line to the Southerly line of North 155th Street as condemned under King County Superior Court Cause No. 118650; thence Westerly along said Southerly line to a point 272.50 feet Easterly of the intersection of said Southerly line with the Westerly line of said Tract 16; thence Southerly parallel with said Westerly line a distance of 68 feet; thence Southeasterly to the true point of beginning.



HALL ARCHITECTURE
North Creek Office Center
19119 North Creek Parkway, Suite 105
Bothell, WA 98011
ph: (425) 415-0746 fax: (425) 415-0799



clearwire®
5508 LAKE WASHINGTON BLVD.
SUITE 500
KIRKLAND, WA 98055

TWIN PONDS PARK
WA-SEA-021-A
2341 N 155TH ST
SHORELINE, WA 98155

NO.	DATE	REVISIONS	BY	CHK	APP'D
3	09-02-05	REVISED PRELIMINARY CONSTRUCTION DOCUMENTS	CEC	RBH	RBH
2	08-31-05	PRELIMINARY CONSTRUCTION DOCUMENTS	CEC	RBH	RBH
1	08-19-05	SITE EXHIBIT	JBK	RBH	RBH
SCALE: AS SHOWN			DESIGNED BY: JBK		
			DRAWN BY: JBK		

HALL ARCHITECTURE
BOTHELL, WA

OVERALL SITE PLAN

DRAWING NUMBER

WA-SEA-021-A- C01.1

REV

0

AFTER RECORDING, PLEASE RETURN TO:

Clearwire Corporation
Attn: Property Manager
10210 NE Points Drive, Suite 210,
Kirkland, WA 98033

Memorandum of Lease

A Communication Tower Agreement ("Lease") by and between City of Shoreline ("Landlord") and Clearwire Corporation, a Delaware corporation ("Tenant") was made regarding a portion of the following property:

See attached Exhibit A incorporated herein for all purposes.

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date") and shall terminate at midnight on the last day of the month in which the fifth (5th) anniversary of the Commencement Date shall have occurred, unless sooner terminated in accordance with the terms thereof. Tenant shall have the right to extend the Lease for two (2) additional five-year terms.

IN WITNESS WHEREOF, the parties hereto have executed this memorandum effective as of the date of the last party to sign.

TENANT: CLEARWIRE CORPORATION

LANDLORD:

	By: _____	
By: _____	Name: _____	
Name: _____	Title: _____	
Title: _____	Tax _____	ID#: _____

Date: _____

Date:

TENANT ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 2005 before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument, and acknowledged it as the _____ of Clearwire Corporation, to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My appointment expires _____
Print Name _____

LANDLORD ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 2005, before me, a Notary Public in and for the State of Washington, personally appeared Steven C. Burkett personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My appointment expires _____
Print Name _____

**EXHIBIT A TO MEMORANDUM OF LEASE
LEGAL DESCRIPTION**

PARCEL 1

The South 165 feet of Lot 3 and Lot 4, EXCEPT the South 180 feet thereof, ALL in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, page 72, records of King County; EXCEPT the West 10 feet thereof conveyed to King County for Meridian Avenue, by Deeds recorded under Auditor's File Nos. 2884689 and 2884692.

SUBJECT TO: Right to make necessary slopes for cuts or fills upon property herein described as granted by Deeds recorded under Auditor's File No. 2884689 and 2884692.

PARCEL 2

That portion of Tract 2, in Block 3 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, page 72, records of King County, lying Westerly of Primary State Highway No. 1, Seattle Freeway, E. 145th St. to E. 200th St. Condemned in King County Superior Court cause No. 588865, EXCEPT the West 10 feet thereof conveyed to King County for road under Auditor's File No. 2307202.

SUBJECT TO: Relinquishment of right of access to state highway and of light, view and air, under terms of deed to the State of Washington, recorded August 20, 1962, under Superior Court Cause No. 588865.

PARCEL 3

Tracts 15 and 16 in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, on page 72, records of King County, EXCEPT that portion lying Easterly of a line drawn parallel with and 40 feet Westerly, when measured at right angles and/or radially, from the Relocated First Avenue Northeast Survey Line of Primary State Highway No. 1, Seattle Freeway, East 145th Street to East 200th Street; conveyed to the State of Washington by deed recorded under Auditor's File No. 546939; and EXCEPT that portion of said Tract 16, as follows: Beginning on a point on the North line of said Tract 16, which is 272.50 feet East from the Northwest corner of said Tract 16; thence Easterly along said North line to intersect the Westerly margin of relocated First Avenue Northeast as established by deed recorded under Auditor's File No. 5483419, records of King County, Washington; thence Southerly along said Westerly margin to the intersection of the Easterly projection of that certain line 118.26 feet in length as described in a deed recorded under Auditor's File No. 4312110, records of King County, Washington; thence West along said certain line and Easterly projection to that certain point referred to as the true point of beginning in describing that certain

Tract of land as conveyed by deed recorded under said Auditor's File No. 4312110; thence Northwesterly along the Westerly line of said certain tract, 52.88 feet to an angle point in said Westerly line; thence North 68 feet to the true point of beginning of this description; EXCEPT the North 10 feet of said Tract 16 condemned for North 155th Street in King County Superior Court Cause No. 118650.

PARCEL 4

Tract 13 in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, on page 72, records of King County; EXCEPT the West 30 feet of the South 60 feet conveyed to King County for road by deed recorded under Auditor's File No. 4066472.

PARCEL 5

Tract 14 in Block 4 of Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats, on page 72, records of King County; EXCEPT the East 10 feet thereof as conveyed to King County by Deed recorded under Auditor's File No. 2307201.

PARCEL 6

That portion of Tract 16, Block 4, Green Lake Five Acre Tracts to the City of Seattle, as per plat recorded in Volume 11 of Plats on page 72, records of King County, described as follows: Beginning at a point on the Southerly line of Tract 15 in said Block 4 which is 399.05 feet East of the Southwest corner thereof and running thence Northerly parallel with the East line of said Tracts 15 and 16, a distance of 513.89 feet, more or less, to a point which is 130 feet Southerly of the North line of said Tract 16; thence Westerly parallel with the Northerly line of said Tract 16 a distance of 118.66 feet to the true point of beginning; thence Easterly parallel with the Northerly line of said Tract 16 to the Westerly line of First Avenue, Northeast as deeded to King County by deeds recorded under Auditor's File Nos. 2307206, 2383278 and 2410821, records of said county; thence Northerly along said Westerly line to the Southerly line of North 155th Street as condemned under King County Superior Court Cause No. 118650; thence Westerly along said Southerly line to a point 272.50 feet Eastern of the intersection of said Southerly line with the Westerly line of said Tract 16; thence Southerly parallel with said Westerly line a distance of 68 feet; thence Southeasterly to the true point of beginning.

TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT

THIS LEASE AGREEMENT entered into by and between the City of Shoreline, a municipal corporation duly organized and existing under the laws of the State of Washington, as Lessor (hereinafter referred to as "City") and ClearWire, LLC, a Nevada limited liability company (hereinafter referred to as "Lessee").

W I T N E S S E T H:

1. PREMISES. The City owns the real property known as Shoreline Park (Assessor's Parcel Number 2225300320), legally described in Exhibit A. The City leases to the Lessee 49 square feet of space located at 19030 1st Ave. NE, Shoreline, WA. 98155, as depicted in Exhibit B, for housing, installing, constructing, operating and maintaining certain telecommunications facilities (hereinafter referred to as "Premises"). Lessee accepts the Premises for such purpose, subject to the considerations, terms and conditions specified in this Telecommunications Facilities Lease Agreement (hereinafter referred to as "Lease").

2. DEFINITIONS. For the purpose of this Lease, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

"Commencement Date" means the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work.

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

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

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

"Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service;

"Telecommunications facilities" means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, electronics,

equipment storage structures and other appurtenances used or to be used to transmit, receive, distribute, provide, house or offer telecommunications services;

“Telecommunications provider” means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities;

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Utility easement” means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

3. USES AND PURPOSES. Lessee shall have the use and occupancy of the Premises for the purpose of transmission and reception of telecommunication and signals in any and all frequencies that Lessee is allowed to use by the Federal Communications Commission using real property and telecommunications facilities approved in Exhibit B. Lessee shall be responsible for adherence to all federal, state and local regulations pertaining to the operation of a communications facility.

Lessee shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, as described in Exhibit B after obtaining required permits.

City shall provide Lessee access to the Premises at all times adequate to service the Premises and the telecommunication facilities at all times during this Lease. Lessee shall have the right to use existing park access drives and parking spaces. Lessee agrees to provide the City with a schedule outlining the frequency of required visits (e.g., quarterly maintenance check, monthly site cleanup, etc.), and to give the City at least five (5) days notice prior to the use of substantial and/or heavy equipment and the excessive use of parking spaces.

Lessee shall provide the City with a list of all authorized individuals who will have access to the Premises. Notification of changes to the list shall be provided to the City within 24 hours by telephone or fax from the point of contact identified in Section 40(G), which notice shall be followed by written notification pursuant to Section 40(G). Lessee shall be responsible for conducting appropriate background checks of all of their employees.

Employees visiting the Premises shall be readily identifiable as employees of the Lessee by uniform identification badge, marked company vehicle, or other proof of employment. For the purposes of this section, the term “employees” includes contractors and subcontractors.

4. **NON-EXCLUSIVE LEASE.** This Lease is nonexclusive and does not preclude the City from granting a similar lease, right, license, franchise, etc. to other carriers, providers or other persons for telecommunications or any other purpose.

5. **TERM OF LEASE.** This Lease shall be valid for a term of five years commencing on the Commencement Date and terminating at 11:59 p.m. on the day before the five (5) year anniversary of the Commencement Date. Lessee shall have the right to extend the Term of this Lease for two (2) additional terms (each a "Renewal Term") of five (5) years each. The Renewal Terms shall be on the same terms and conditions as set forth herein. Lessee shall provide written notice to City of its intent to extend each Renewal Term at least thirty (30) days before the commencement of each Renewal Term.

6. **RIGHTS GRANTED.** This Lease does not convey any right, title or interest in the City property, but shall be deemed the right only to use and occupy the City property for the limited purposes and term stated in the Lease. Further, this Lease shall not be construed as any warranty of title.

7. **INTERFERENCE WITH OTHER USERS.** The Lessee acknowledges that the City may enter into leases with other tenants for their equipment and telecommunications facilities for the purposes of transmitting and receiving telecommunication signals from City property. The City, however, is not in any way responsible or liable for any interference with Lessee's use of the City property which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with the Lessee's use of the City property, and such use or operation was not in existence on the date of execution of this Lease, and the Lessee cannot resolve this interference with the other tenants, the City will, upon written request by Lessee, cause such interfering use to cease. The Lessee shall cooperate with all other tenants to identify the causes of and work towards the resolution of any electronic interference problem. In addition, the Lessee agrees to eliminate any radio or television interference caused to City-owned facilities or surrounding residences at Lessee's own expense and without installation of extra filters on City-owned equipment. Lessee further agrees to accept such interference as may be received from City operated telecommunications or other City facilities located upon the City property subject to this Lease except those City antenna sites placed upon Lessee's facilities pursuant to Section 10(B).

8. **OWNERSHIP AND REMOVAL OF IMPROVEMENTS.** All buildings, landscaping and all other improvements, except telecommunications facilities, shall become the property of the City upon expiration or termination of the Lease. In the event that the City requires removal of such improvements after termination of the Lease, such removal shall be accomplished at the sole expense of the Lessee and completed within 30 days after receiving notice from the City requiring removal of the improvements. Additional time may be granted upon the discretion of the City which approval shall not be unreasonably withheld. In the event that telecommunications facilities or other equipment are left upon City property after expiration or termination of the lease, they shall, at the City's option, if not removed by the Lessee upon 30 days written notice from the City, be removed and stored at the expense of Lessee. Stored

telecommunications facilities that are not claimed by the Lessee within six (6) months from termination of the Lease shall become the property of the City.

9. CANCELLATION OF LEASE BY LESSEE.

A. All Leases are contingent upon the Lessee obtaining all necessary permits, approvals and licenses for the proposed facilities. In the event that the Lessee is unable to obtain all such permits, approvals and licenses, it may cancel its lease, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days prior written notice to the City. Lessee agrees to restore City property to original condition if cancellation is requested.

B. In the event Lessee determines that the Premises are unsuitable for its intended purpose, or if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference, the Lessee shall have the right to cancel the Lease upon 180 days written notice to the City. However, no prepaid rent shall be refundable; except in the event any changes occur with respect to the City's use of the property subsequent to the effective date of this Lease (including but not limited to additional Lessees as permitted by the City) and such changes result in the property becoming unsuitable for Lessee's intended purpose.

10. COMPENSATION TO THE CITY.

A. Starting on the Commencement Date and on the first day of each month thereafter during the term of the Lease, Lessee shall pay rent at a rate of One Thousand and No/100 Dollars (\$1,000.00) per month, prorated for any partial months. Substantial expansion of the initial configuration contained in Exhibit B will result in review and possible re-negotiation of the rental rate contained herein. Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three percent (3%) of the Rent for the previous year.

Any payments received after fifteen (15) days after the due date shall include a late payment penalty of 2% of the annual rental fee for each day or part thereof past the due date.

B. Additional Consideration. City shall be allowed, at City's sole expense, to attach City's communication antennas to Lessee's telecommunications tower provided City first obtains Lessee's prior written consent for such attachments. Such consent shall not be unreasonably withheld. Lessee's approval for said attachments shall be contingent upon determining whether Lessee's tower is properly engineered to accommodate City's antenna system and such transmission shall not result in any impairment or diminution in the quality of Lessee's service. Further, said approval shall be given only after Lessee has reviewed and approved City's engineering plans for said antenna attachments in a location specified by Lessee. Approval shall not be unreasonably withheld. Upon written approval by Lessee, said attachments shall be installed by qualified licensed contractors and in accordance with Lessee's directives for the method of installment and with permits issued by all applicable governmental authorities having jurisdiction which shall first be obtained by City at its sole expense. City

acknowledges and agrees that Lessee reserves the right to relocate City's antennas at any time(s) to accommodate modifications required for Lessee's future system requirements, provided such relocation shall provide equivalent quality of service after such relocation.

11. AMENDMENT OF LEASE. Except as provided within the existing Lease, a new Lease shall be required of any telecommunications carrier or other entity that desires to substantially expand, modify, or relocate its telecommunications facilities or other equipment located upon the Premises. If ordered by the City to locate or relocate its telecommunications facilities or other equipment on the City property pursuant to Section 19, the City shall grant a lease amendment.

12. OBLIGATION TO CURE AS A CONDITION OF RENEWAL. No Lease shall be renewed until any ongoing violations or defaults in the Lessee's performance of the Lease have been cured, or a plan detailing the corrective action to be taken by the Lessee has been approved by the City.

13. IMPROVEMENTS. During the term of this Lease if Lessee wishes to substantially expand the initial configuration contained in Exhibit B, Lessee will provide at least thirty (30) days notice to City. Substantial expansion may require a new Lease.

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

15. INTERFERENCE WITH THE PUBLIC WAYS. The Lessee shall not locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities which interfere with public ways shall be moved by the Lessee, at the Lessee's cost, temporarily or permanently, as determined by the City Public Works Director.

16. REPAIR AND EMERGENCY WORK. In the event of an unexpected repair or emergency, the Lessee may commence such repair and emergency response work as required under the circumstances, provided the Lessee shall notify the City as promptly as reasonably possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

17. MAINTENANCE OF LEASE FACILITIES. The Lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. Lessee shall not permit waste, damage, or injury to the premises including any City property, public ways of the City, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. Lessee shall not restrict site access to City. City shall have the exclusive right to inspect the Lessee's telecommunications facilities and equipment at any time during the term of this Lease to ensure compliance with the

terms and conditions herein; Provided, however, Lessee has the right to be present at all inspections of Lessee's telecommunications facilities and equipment, and City shall give Lessee at least 24 hours prior notice of such intent.

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

19. RELOCATION OR REMOVAL OF FACILITIES. Within one hundred eighty (180) days following written notice from the City, the Lessee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways or upon City property whenever the City shall have determines that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways or City property; and

B. The operations of the City or other governmental entity in or upon the public ways or City property.

The City will allow Lessee to relocate the telecommunications facilities to another comparable, mutually agreeable location in Shoreline Park. Additional time for removal or relocation may be granted at the discretion of the City which extension shall not be unreasonably withheld. If Lessee fails to remove the property upon request by the City, Lessee agrees to reimburse the City for any and all removal costs incurred by the City.

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

A. Upon expiration or termination of the Lessee's Lease without approved extension or renewal;

B. Upon abandonment of a facility within the public ways or real property of the City. Any property of a Lessee shall be deemed abandoned if left in place 30 days after expiration or termination of the Lease;

C. If the system or facility was constructed or installed without the prior grant of a Lease;

D. If the system or facility was constructed or installed without the prior issuance of a required City permits; and

E. If the system or facility was constructed or installed at a location not permitted by the Lease.

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

21. EMERGENCY REMOVAL OR RELOCATION OF FACILITIES. The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the City and upon City property, as the City may determine in good faith to be necessary in response to any public health or safety emergency. The City shall not be liable to Lessee, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section. The City will give notice to the Lessee prior to cutting or moving the facilities, if practical.

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

23. RESTORATION OF PUBLIC WAYS, OTHER WAYS AND CITY PROPERTY.

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

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

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

D. The Public Works Director shall be responsible for inspection and final approval of the condition of the public ways, other ways, and City property following any construction and restoration activities therein. Further, the provisions of this Section shall survive the expiration, revocation, or termination of this Lease.

24. FACILITIES MAPS. The Lessee shall provide the City with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of its telecommunications facilities within the public ways and upon City property. The Lessee shall provide the City with updated maps upon request by the City.

25. BOOKS, RECORDS AND MAPS. All technical specifications to evaluate interference with potential lessees maintained by the Lessee with respect to its telecommunications facilities on the Premises shall be made available for inspection by the City at reasonable times and intervals at Lessee's offices where such records are ordinarily stored upon fifteen (15) days prior written notice; *Provided, however,* that nothing in this Section shall be construed to require the Lessee to violate state or federal law regarding subscriber privacy, nor shall this Section be construed to require the Lessee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

26. SUB-LEASING. Lessee is not permitted to sublet the Premises.

27. UTILITIES. Electricity, HVAC and telephone service, or other utilities are to be provided to the Premises and Site at Lessee's expense and as outlined in Exhibit B. City shall cooperate with Lessee in obtaining utility service.

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

29. INSURANCE. The Lessee shall, as a condition of the Lease, secure and maintain the following liability insurance policies insuring both the Lessee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers,

consultants, and volunteers against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Lessee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

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

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

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

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

E. The liability insurance policies required by this Section shall be maintained by the Lessee throughout the term of the Lease, and such other period of time during which the Lessee is operating without a Lease hereunder, or is engaged in the removal of its telecommunications facilities. The Lessee shall provide an insurance certificate, together with an endorsement designating the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to said Lease. Lessee warrants that it shall pay any deductibles pursuant to its standard policies, and shall indemnify Lessor for any losses or claims resulting from Lessee's failure to pay said deductible. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Lessee. The Lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Lessee's insurance and shall not contribute with it. The City shall be provided thirty (30) days advance notice of cancellation of any coverages required in 29.A. above. All of Lessee's insurance requirements may be satisfied through any combination of excess liability and/or umbrella policies.

F. Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the Lessee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

30. GENERAL INDEMNIFICATION.

A. Lessee covenants not to bring suit against the City and hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officers, employees, agents and volunteers from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which the Lessee might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of Lessee's performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the Lessee, its agents, employees, representatives or assigns. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of the City. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

B. Lessor covenants not to bring suit against Lessee and hereby agrees to defend, indemnify, and hold harmless Lessee, its directors, officers, employees and agents from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which the City might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of the City's performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the City, its officers, employees, agents and volunteers. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of Lessee. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

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

31. DEPOSIT FOR REMOVAL. The Lessee shall post a \$1,000.00 refundable deposit with the City for removal of any equipment and facilities. This deposit shall be refundable upon Lessee's removal of the equipment in compliance with Section 8 of this Agreement.

32. ASSIGNMENTS OR TRANSFERS OF LEASE. Tenant may not assign, or otherwise transfer all or part of its interest in this Agreement or in the Premises without prior written consent of the Landlord; provided, however, that Tenant may assign its interest to any lender in connection with a financing agreement, its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock assets.

A. No Lease shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the Lease, unless otherwise provided.

B. The Lessee and the proposed assignee or transferee of the system shall provide and certify the following information to the City not less than sixty (60) days prior to the proposed date of transfer:

- (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
- (2) All information required of a lease applicant pursuant to Section 4 with respect to the proposed transferee or assignee; and
- (3) Any other information reasonably required by the City.

C. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold and operate the telecommunications facility pursuant to this Lease.

D. Unless otherwise provided in this Lease, the Lessee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Lease. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of the lease, system, or integral part of a system without prior written approval of the City under this Section or pursuant to the Lease shall be void and is cause for revocation of the lease.

F. Lessee shall make no assignment or transfer of this Agreement without obtaining the written consent of Lessor, which consent shall not be unreasonably withheld.

33. TRANSACTIONS AFFECTING CONTROL OF LEASE. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the Lessee, of the ownership or working control of the telecommunications facility, of the ownership or working control of affiliated entities having ownership or working control of the Lessee or of a telecommunications facility, or of control of the capacity or bandwidth of the Lessee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 32 hereof. The Lessee shall

promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Lessee's company. Every change, transfer, or acquisition of control of a Lessee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution or other appropriate order denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the Lease. Approval shall not be required for mortgaging purposes or if said transfer is from the Lessee to another person or entity controlling, controlled by, or under common control with the Lessee

34. REVOCATION OR TERMINATION OF LEASE. The Lease granted by the City to use or occupy public ways of the City or City property may be terminated for the following reasons:

- A. Lessee's construction or operation in the City or in the public ways of the City or upon City property without proper City authorization;
- B. Lessee's construction or operation at an unauthorized location;
- C. Unauthorized substantial transfer of control of the Lessee;
- D. Unauthorized assignment of Lease;
- E. Unauthorized sale, assignment or transfer of Lessee's Lease, assets, or a substantial interest therein;
- F. Misrepresentation by or on behalf of the Lessee in any written statement upon which the City relies in making the decision to grant, review or amend said Lease;
- G. Abandonment of telecommunications facilities in the public ways or upon City property;
- H. Failure to relocate or remove facilities as required in this Lease;
- I. Failure to pay taxes, compensation, fees or costs when and as due the City;
- J. Insolvency or bankruptcy of the Lessee;
- K. Failure to construct or operate in accordance with approved permits; and
- L. Violation of any material provision or term of this lease.
- M. The Federal Communications Commission or its successor entity determines that the telecommunications facilities installed on the Premises are hazardous to health or safety.

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

36. STANDARDS FOR REVOCATION OR LESSER SANCTIONS. If the City determines that a Lessee willfully violated or failed to comply with any of the provisions of this Lease after notice is given the Lessee by the City under the provisions of this Lease, then the Lessee shall forfeit all rights conferred hereunder and the Lease may be revoked or annulled by the City. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies and to recover damages and costs incurred by the City by reason of the Lessee's failure to comply.

37. NOTICE OF ENTRY ON PRIVATE PROPERTY. If directed by the City, at least 24 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform permitted new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the Lessee. A door hanger may be used to comply with the notice and posting requirements of this Section. The Lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Provided, however, that nothing in this Lease shall permit the Lessee to unlawfully enter or construct improvements upon the property or premises of another.

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

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

40. MISCELLANEOUS.

A. This agreement shall be governed by the laws of the State of Washington.

B. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

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

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

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

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

G. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, to the address of the respective parties set forth below:

LESSOR:

City of Shoreline

Attn: Director, Parks, Recreation and Cultural Services

17544 Midvale Avenue North

Shoreline, WA 98133-4921

Lessee: Clearwire, LLC

Attn: Property Manager

10210 NE Points Drive, Suite 210

Kirkland, WA. 98033

Telephone: 425 216-7600

Fax: 425 216-7900

with a copy to: ClearWire, LLC

Attn: Law Department

10210 NE Points Drive, Suite 210

Kirkland, WA. 98033

Telephone: 425 216-7600

Fax: 425 216-7900

and with a copy to:

The individuals identified in this paragraph shall be the specific point of contact for each party regarding all topics. Any change to this point of contact shall be delivered to the other party in writing by certified or registered mail, return receipt requested.

41. ENVIRONMENTAL. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or

hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease. Lessee may conduct soils testing on the Premises.

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

LESSEE:

Date: _____

CITY OF SHORELINE

Date: _____
STEVEN C. BURKETT, City Manager

APPROVED AS TO FORM:

IAN R. SIEVERS, City Attorney

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

On this _____ day of _____, 2005, personally appeared _____
to me known to be the _____ of _____, a _____
_____, 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/she was authorized to execute said
instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and
year first above written.

Notary Public in and for the State of _____
Residing at _____
My commission expires: _____

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

On this _____ day of _____, 20____, personally appeared Steven C. Burkett to me known to be the City Manager of the City of Shoreline, a municipal corporation, that executed the within and foregoing instrument, and acknowledged said instrument 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 she was authorized to execute said instrument.

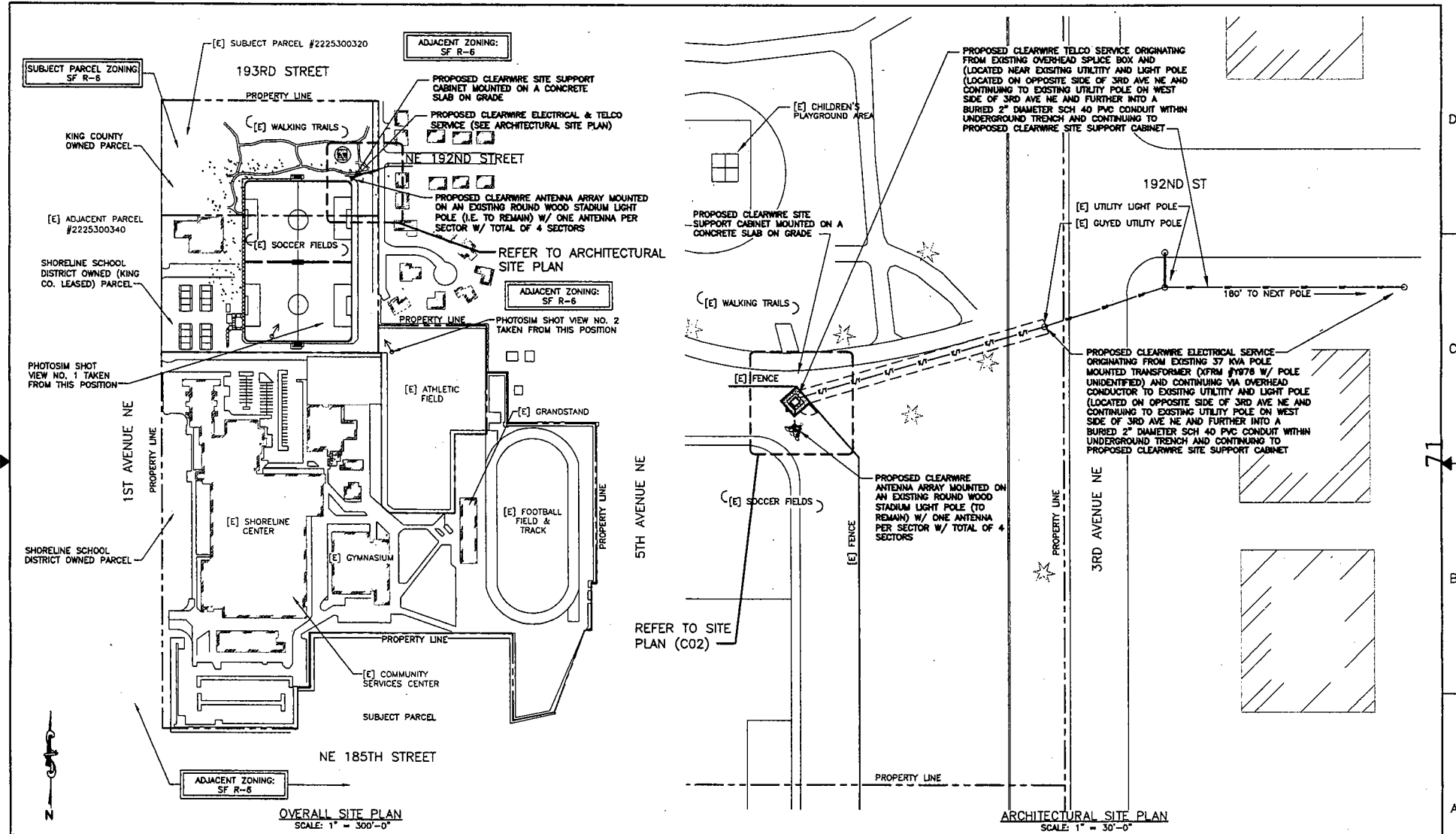
In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington
Residing at _____
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Lot 19, Echo Lake Garden Tracts Division No. 5, according to the plat recorded in Volume 12 of Plats, page 28, records of King County, Washington.



HALL ARCHITECTURE
North Creek Office Center
19119 North Creek Parkway, Suite 105
Bothell, WA 98011
ph: (425) 415-0746 fax: (425) 415-0799

CLSGroup

clear w're®
5508 LAKE WASHINGTON BLVD.
SUITE 500
KIRKLAND, WA 98055

SHORELINE PARK
WA-SEA010-C
19030 1ST AVE NE
SHORELINE, WA 98155

NO.	DATE	REVISIONS	BY	CHK	APP'D
1	09-02-05	REVISED PRELIMINARY CONSTRUCTION DOCUMENTS	JBK	RBH	RBH
1	08-24-05	PRELIMINARY CONSTRUCTION DOCUMENTS	JBK	RBH	RBH
SCALE: AS SHOWN			DESIGNED BY: JFO		

HALL ARCHITECTURE
BOTHELL, WA
OVERALL SITE PLAN
ARCHITECTURAL SITE PLAN
DRAWING NUMBER
WA-SEA010-C-C01
REV
0

AFTER RECORDING, PLEASE RETURN TO:

Clearwire Corporation
Attn: Property Manager
10210 NE Points Drive, Suite 210,
Kirkland, WA 98033

Memorandum of Lease

A Communication Tower Agreement ("Lease") by and between City of Shoreline ("Landlord") and Clearwire Corporation, a Delaware corporation ("Tenant") was made regarding a portion of the following property:

See attached Exhibit A incorporated herein for all purposes.

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date") and shall terminate at midnight on the last day of the month in which the fifth (5th) anniversary of the Commencement Date shall have occurred, unless sooner terminated in accordance with the terms thereof. Tenant shall have the right to extend the Lease for two (2) additional five-year terms.

IN WITNESS WHEREOF, the parties hereto have executed this memorandum effective as of the date of the last party to sign.

TENANT: CLEARWIRE CORPORATION

LANDLORD:

By:

By:

Name:

Title:

Name:

Title:

Tax

ID#:

Date: _____

Date:

TENANT ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 2005 before me, a Notary Public in and for the State of _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument, and acknowledged it as the _____ of Clearwire Corporation, to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My appointment expires _____
Print Name _____

LANDLORD ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 2005, before me, a Notary Public in and for the State of Washington, personally appeared Steven C. Burkett personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of _____,
residing at _____
My appointment expires _____
Print Name _____

**EXHIBIT A TO MEMORANDUM OF LEASE
LEGAL DESCRIPTION**

Lot 19, Echo Lake Garden Tracts Division No. 5, according to the plat recorded in Volume 12 of Plats, page 28, records of King County, Washington.

This page intentionally left blank.